CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 167

CHARLES F. BLACKTON, PETITIONER,

vs.

AARON GORDON

ON WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

PETITION FOR CERTIORARI FILED JUNE 24, 1937.

CERTIORARI GRANTED OCTOBER 11, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 167

CHARLES F. BLACKTON, PETITIONER,

vs.

AARON GORDON

ON WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

INDEX.

	Original	Print
Record from First District Court of Jersey City	1	1
State of demand	1	1
Schedule "A"—Writ of execution	3	2
Order for execution against wages, etc.	5	3
Affidavit to obtain execution against wages, etc.	7	5
Docket entries	9	6
Summons and return	9	6
Judgment	10	6
Case	11	7
Appearances	11	7
Testimony or Aaron Gordon	11	7
William Turner	15	10
Charles F. Blackton	17	11
William Seaman	21	15
Motion for nonsuit	22	16
Motion for direction of verdict	24	17
Certification of stenographers (omitted in printing)	26	
Certification of judge	26	18

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 29, 1937.

	Original	Print
Record from First District Court of Jersey City—Continued.		
Case—Continued.		
Exhibit P-1—Letter from Erie R. R. Co. to Aaron Gordon	27	19
P-3(a)—State of demand in case of Gordon-Findlay	28	19
P-3(b)—Affidavit to obtain execution	30	21
P-3(c)—Order for execution against wages	31	22
P-3(d)—Writ of execution	33	23
P-3(e)—Letter from Erie R. R. Co. to clerk of court	35	24
Notice of appeal	36	25
Proceedings in Supreme Court of New Jersey	37	25
Specifications of determinations and directions appealed from	37	25
Opinion of court, Trenchard, J.	42	29
Judgment of affirmance	47	32
Notice of appeal	48	33
Grounds of appeal	49	33
Proceedings in Court of Errors and Appeals of New Jersey	51	35
Check list	51	35
Opinion, per curiam	52	36
Judgment	54	36
Clerk's certificate	55	37
Order allowing certiorari	56	38

[fol. 1]

IN FIRST DISTRICT COURT OF JERSEY CITY

AARON GORDON, Plaintiff,

vs.

CHARLES F. BLACKTON, Defendant

On Contract

STATE OF DEMAND—Filed August 17, 1934

The plaintiff, Aaron Gordon, demands of the defendant the sum of $500.00 for that:

1. On or about the 9th day of January, 1934, Aaron Gordon, plaintiff herein, recovered a judgment against one Horace Findlay for the sum of $500.00 damages and $29.20 costs of suit, in this Court.

2. In accordance with the statute in such case made and provided, the plaintiff caused to be issued out of this Court on February 6th, 1934, a writ of execution against the wages of the said Horace Findlay, a copy of which writ is hereto annexed as Schedule "A" and made a part hereof, as if fully set forth herein.

3. On February 6th, 1934, the defendant, Horace Findlay was in the employ of the Erie Railroad Company, a corporation, and received wages from said Company in the amount of $100.00 every two weeks and has since said date continued in the employ of the Erie Railroad Company.

[fol. 2] 4. On February 10th, 1934, William Turner, a Constable of the County of Hudson, State of New Jersey, served the said writ of execution upon Charles F. Blackton, Superintendent of Marine Transportation, Erie Railroad Company, a corporation.

5. On February 20th, 1934, the said Erie Railroad Company advised B. Frances Marron, Clerk of the First District Court of Jersey City, that it would not honor said writ of execution served on its Superintendent of Marine Department.

6. Charles F. Blackton is a proper officer of the corporation which employs Horace Findlay.

7. Since the service of the said writ of execution to date hereof, said defendant, Horace Findlay, has received from his employers ten pays.

8. The said Erie Railroad Company, a corporation, has failed to pay over to the officer presenting said execution, the percentage of said indebtedness or pays amounting to the sum of $100.00.

9. Wherefore, in accordance with the statute in such case made and provided, the plaintiff demands judgment against the defendant, Charles F. Blackton, the sum of $100.00 together with interest and costs of suit.

Aaron Gordon, Attorney Pro se.

[fol. 3] SCHEDULE "A" TO STATE OF DEMAND

HUDSON COUNTY, ss:

(L. S.)

The State of New Jersey to the Sergeant-at-Arms of the First District Court of the City of Jersey City:

Whereas, on the 9th day of January, 1934, Aaron Gordon recovered a judgment in the First District Court of Jersey City against Horace Findlay for the sum of $529.20 damages and costs, and whereas the said judgment remains wholly unsatisfied, and the amount remaining due on said judgment is in the sum of $529.20 besides execution fees and interest from the 9th day of January, 1934, until fully paid and satisfied, and

Whereas, Horace Findlay is at present employed by the Erie Railroad Company, and has wages, debts, earnings, salary and income from trust funds or profits due and owing to him to the amount of One Hundred ($100.00) Dollars or more every two weeks, and that the same is payable to him by the said Erie Railroad Company, and the same is now due and owing to the said Horace Findlay and shall hereafter become due and owing to him; and

Whereas, an Order has been made in the cause by the said District Court on the 2nd day of February, 1934, directing the issuing of this writ, said writ to become a lien and continuing levy upon the wages, debts, earnings, salary

and income from trust funds or profits which become due to the said Horace Findlay from the said Erie Railroad Company to the amount of $10.00 every two weeks, and upon each payment of such wages, debts, earnings, salary and income from trust funds or profits due.

[fol. 4] Now, therefore, we command you that you satisfy said judgment and costs with interest thereon, together with your fees, out of the wages, debts, earnings, salary and income from trust funds or profits due to the said judgment debtor, Horace Findlay, now due to him and which shall hereafter become due and owing to him from the Erie Railroad Company, according to the statute in such case made and provided; and that this execution and levy to be made thereunder shall be a lien and continuing levy upon the wages, debts, earnings, salary and income from trust funds or profits due or to become due to the said Horace Findlay from the said Erie Railroad Company to the amount of $10.00 every two weeks until this execution and the expenses thereof are fully paid and satisfied; and that when this writ is satisfied you make return of the proceedings had thereon.

Witness, August Ziegener, Esq., Judge of the said Court, at Jersey City, aforesaid, and the seal of the Court the 6th day of February, in the year of our Lord, one thousand nine hundred and thirty-four.

B. Frances Marron, Clerk.

[fol. 5] In First District Court of Jersey City

Aaron Gordon, Plaintiff,

vs.

Horace Findlay, Defendant

Order for Execution Against Wages, etc.

The affidavit of Aaron Gordon, the above named plaintiff, having been filed herein, showing that a judgment was recovered by said plaintiff on the 9th day of January, 1934, in said cause against Horace Findlay, the above named defendant, for the sum of $529.20 damages and costs, and thereafter execution was issued thereon and has been re-

turned wholly unsatisfied and that it remains wholly unpaid; that said defendant is employed as a licensed deck officer by the Erie Railroad Company and that his wages, debts, earnings, salary and income from trust funds or profits due and owing to him amount to the sum of $100.00 or more every two weeks, and that the same is payable to him by the Erie Railroad Company, its servant or agent, and is now due and owing to him; and said affidavit having been considered:

It is on this 2nd day of February, 1934, Ordered that execution do issue against the wages, debts, earnings, salary and income from trust funds or profits due and owing to the said judgment debtor from the Erie Railroad Company, [fol. 6] and the said Erie Railroad Company is ordered to hold from the wages the sum of $10.00 every pay-day, the same amount being not more than ten per centum of the weekly pay of Horace Findlay; and that the said Erie Railroad Company be and is hereby ordered to pay the sum so held as aforesaid, to the sergeant-at-arms by whom said execution is presented until the full sum of the judgment and costs of said suit, together with costs hereof, and interest from the date of said judgment until the date of final payment, be fully paid and satisfied; and the said Erie Railroad Company, its servants and agents, are hereby restrained from paying the said money to the said defendant or to any other person than the sergeant-at-arms; and it is further ordered that the said execution from its presentation shall be a continuing lien and levy against the said wages, debts, earnings, salary and income from trust funds or profits, as the same become due, until the full amount herein specified shall be fully paid and satisfied, together with subsequent costs and charges.

August Ziegener, Judge of the First District Court of Jersey City.

[fol. 7] IN FIRST DISTRICT COURT OF JERSEY CITY

AARON GORDON, Plaintiff,

vs.

HORACE FINDLAY, Defendant

AFFIDAVIT TO OBTAIN EXECUTION AGAINST WAGES, ETC.

STATE OF NEW JERSEY,
County of Hudson, ss:

Aaron Gordon, being duly sworn according to law, upon his oath, deposes and says, that he is the plaintiff and judgment creditor in the above stated cause; that on the 9th day of January, nineteen hundred and thirty-four, judgment was recovered by plaintiff in said cause against Horace Findlay, the defendant and judgment debtor for the sum of $529.20 damages and costs; that the said defendant is employed by the Erie Railroad Company, and deponent is credibly informed and verily believes that his wages, debts, salaries, income from trust funds, or profits due him amount to the sum of $100.00, he being paid every two weeks, and that the said sum of $100.00 each pay day is now due and owing to the said Horace Findlay, the judgment debtor, and will hereafter become due and owing to him.

Wherefore deponent applies for the issuance of an execution against said wages, debts, earnings, salaries, income from trust funds or profits, according to the statute in such [fol. 8] case made and provided, and states that no previous application has been made for this order.

Aaron Gordon

Sworn and Subscribed to before me this 2nd day of February, 1934. Herman Willner, An Attorney at law of New Jersey.

[fol. 9] In First District Court of Jersey City

Before August Ziegener, Esq., Judge

[Title omitted]

Docket Entries

Summons and Return

A summons was issued tested August 17, A. D. 1934, returnable August 30, A. D. 1934, at 10 o'clock in the forenoon at the Court Room of the said Court in the City of Jersey City. The constable returned the summons as follows, viz: "I served the within summons August 17, 1934, on Charles F. Blackton, the defendant, by reading the same to him and delivering to him a copy thereof."

William Turner, Constable.

[fol. 10] Plaintiffs' demand was filed August 17, 1934.

May 9, A. D. 1935, the plaintiff appearing and the defendant appearing the trial of the cause was proceeded with as follows:

Upon application of, defendant and by consent H. Richard Woebse was appointed and sworn as stenographer.

On the part of the plaintiff—Aaron Gordon, William Turner, Charles F. Blackton, and William Seaman were sworn and testified. Decision reserved. Briefs to be submitted.

On the part of the defendant—Motion for a non-suit denied on June 24, 1935.

July 15, 1935. Motion for direction of verdict denied.

Judgment

July 15, 1935. Judgment for Plaintiff, $106.00.

Whereupon it is on this fifteenth day of July, 1935, by this Court considered and adjudged that Aaron Gordon, plaintiff, recover against said Charles F. Blackton, defendant, the sum of one hundred and six dollars, debt and nine dollars and ten cents costs of suit.

July 23, 1935. Notice of appeal and Bond filed by defendant.

I, B. Frances Marron, Clerk of the First District Court of Jersey City, Frank H. Eggers, Esquire, Judge, do hereby

certify that the foregoing is a true copy of the summons, State of Demand, Garnishee, execution, and Transcript of a judgment of the said Court.

In witness whereof, I do hereby set my hand as Clerk of the said Court and affix the seal of the said Court this eighth day of August, nineteen hundred and thirty-five.

B. Frances Marron, Clerk. (Seal.)

[fol. 11] In First District Court of Jersey City

Aaron Gordon, Plaintiff,

vs.

Charles F. Blackton, Defendant

Case

Jersey City, New Jersey, May 9, 1935.

Before Hon. Frank H. Eggers, Judge

Appearances

John W. Ockford, Esq., Attorney for plaintiff.

Patrick F. McDevitt, Esq., (Collins & Corbin, Esqs., Attorney for defendant.

Aaron Gordon, the plaintiff, called as a witness on his own behalf, being duly sworn, testified as follows:

Direct examination.

By Mr. Ockford:

Q. Mr. Gordon, you are the plaintiff in this suit?

A. That is right.

Q. You are a practicing attorney of this State?

A. Yes, sir, and counselor at law.

Q. Did you obtain in this court a judgment against one Howard Findlay?

[fol. 12] A. I did. I sued Mr. Findlay for legal services pursuant to a contract that he made with me to pay me $500. I obtained a judgment by default against him. I don't recall the date, but the suit was in this court and I think the

docket or the jacket which you have there will give it to you.

Q. I show you several papers in the Court's file No. 223919, and ask you if that is the record of this court in the case wherein you obtained a judgment against Howard Findlay.

A. This (indicating) is the record of the court, the First District Court of Jersey City, of the case entitled Aaron Gordon, Plaintiff, versus Howard Findlay, Defendant.

By the Court:

Q. What was that number?

A. 223919, the court number, in which I obtained a judgment for $500 plus $59.94 costs. The date of the judgment was the 9th day of January, 1934, and it was a judgment by default.

By Mr. Ockford:

Q. Thereafter did you obtain an order directing execution against the defendant's wages?

A. I did. I obtained an order.

Q. What was the date of the issuance of the order?

A. The date of the issuance of the order is the 2nd day of February, 1934. I obtained this order for an execution against wages as distinguished from a garnishment proceeding.

Q. These (indicating) are the original papers, are they not?

A. That is right.

[fol. 13] Q. Pursuant to the order, did you issue an execution?

A. Well I—pursuant to that order I ordered—I requested the Clerk of this court to issue an execution.

Q. Do you know to whom the execution was issued?

A. The execution was issued to the Sergeant-at-Arms of the First District Court of Jersey City and by him delivered to Constable Turner, who served the same.

Q. Since the issuance of that execution, have you been paid or have you received any part of the judgment?

A. I haven't received a single penny.

Q. Did you in connection with this matter receive a letter from the defendant, Mr. Blackton?

A. I did.

Q. Will you produce it, please?

A. You have it in the file there (indicating) and I would like to add that I wrote a letter to Mr. Blackton prior to my instituting suit against him, quite some time prior.

Q. Will you produce the first letter that you received from Mr. Blackton?

Mr. McDevitt: I am going to object to counsel reading that letter.

Mr. Ockford: I just want to have it marked.

A. Here is the letter (handing paper to Mr. Ockford).

Q. This (indicating) is the letter you received?

A. Yes.

Mr. Ockford: I ask to have this letter marked for identification.

[fol. 14] (The paper referred to was marked Exhibit P-1 for identification.)

The Witness: This letter (indicating) was in reply to one which I sent.

Q. Under what date?

A. Well, I addressed the letter to the Erie Railroad Company on the 9th of January, 1934, regarding the judgment I got against Mr. Findlay.

Q. Is this (indicating) a copy?

A. Yes.

Mr. Ockford: I would like to have the copy of this letter marked for identification.

(The paper referred to was marked Exhibit P-2 for identification.)

Q. In connection with this matter, Mr. Gordon, did you ever have occasion to talk with Mr. Findlay w-th respect to his employment?

Mr. McDevitt: I admit, if your Honor please, that Mr. Findlay was employed by the Erie Railroad Company at the time that Mr. Gordon had the execution served.

The Witness: Upon the Erie Railroad Company.

Mr. Ockford: Can you agree that his rate of pay is $200 a month.

Mr. McDevitt: $215 a month, but at that time it was subject to a ten per cent cut.

Mr. Ockford: You will agree that it was at least $200 a month?

Mr. McDevitt: Yes.

[fol. 15] WILLIAM TURNER, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Ockford:

Q. Mr. Turner, I show you from the records of this court, an execution issued in the case of Aaron Gordon versus Howard Findlay, File No. 223919, and I ask you whether you as the constable had anything to do with the service of that writ.

A. Yes. This was turned over to me by Mrs. Marron on the 2nd day of February, 1934.

Q. And Mrs. Marron is the Clerk of this Court?

A. Yes.

Q. What did you do with it after it was turned over to you?

A. I went over to the Erie Railroad to see Mr. Blackton and I served a copy of the writ on Mr. Blackton representing the Erie Railroad.

Q. How did you select Mr. Blackton?

A. I was directed to Mr. Blackton by the superintendent of the Erie Terminal.

Q. In other words, you first went to the superintendent in charge of the whole Terminal?

A. Yes.

Q. And then you were sent to Mr. Blackton as being the superintendent of what department?

A. Of the Marine Department.

Q. Did you present the paper to Mr. Blackton?

A. I did.

Q. And explain it to him?

A. I did.

Q. What, if anything, did he say?

A. He said he would send it to the Legal Department.

Q. Thereafter, did you receive a letter which is in the file dated February 20, 1934, from the Erie Railroad with respect to this execution?

A. I did. It is with the copy of the return.

[fol. 16] Q. You attached it to your return and you filed it in this court file with the papers?

A. That is right.

Q. Was any part of the money demanded under the execution paid to you or collected by you?

A. No, sir.

Mr. Ockford: I desire to offer in evidence, if your Honor please, the record in the case of Aaron Gordon, Plaintiff, versus Howard Findlay, Defendant, No. 223919.

Mc. McDevitt: May I see it first, please?

Mr. Ockford: Yes, (handing paper to Mr. McDevitt). This is the state of demand and the summons. The jacket shows judgment for plaintiff in the sum of $500 and $29.24 costs. It also contains the order, dated February 2, 1934, directing the issuance of an execution against the judgment debtor's wages in the sum of $10.00 every pay day, which is every two weeks. Also the affidavit upon which the order was allowed and the execution referred to in the last witness's testimony, and the letter from the Erie Railroad Company in response thereto.

— McDevitt: Will you let me see the letter from the Erie Railroad Company, please?

Mr. Ockford: Yes, addressed to the Clerk of the court attached to the execution and as a part of the return.

Mr. McDevitt: No objection to any of the papers.

(The papers referred to were received in evidence and marked as one exhibit, Exhibit P-3.)

[fol. 17] CHARLES F. BLACKTON, the defendant, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Ockford:

Q. Mr. Blackton, you are connected with the Erie Railroad?

A. Yes, sir.

Q. What is your position there?

A. Superintendent of the Marine department.

Q. Where is your headquarters?

A. At the foot of Pavonia Avenue, Jersey City.

Q. You are the Charles F. Blackton, are you not, who was served with the execution in this Findlay case?

A. Yes, sir.

Q. And after it was served upon you, did you thereafter deduct any part of the defendant's wages?

A. No, sir.

Q. I show you a letter dated January 10, 1934, and ask you if you wrote that letter.

A. Yes, sir.

Q. You wrote that in response to a letter from Mr. Gordon, did you not?

A. Yes, sir.

Mr. Ockford: I now offer the letter in evidence.

Mr. McDevitt: May I see it? I haven't read it yet.

Mr. Ockford: Surely.

Mr. McDevitt: I have no objection to the letter being offered in evidence.

(The paper referred to, having previously been marked "Plaintiff's Exhibit 1 for identification," was received in evidence and marked Plaintiff's Exhibit 1.)

Mr. Ockford: May I read this letter to your Honor?

[fol. 18] The Court: Yes.

Mr. Ockford: It is a letter on the stationery of the Erie Railroad Company. It reads as follows:

"Mr. Aaron Gordon:

"Receipt is acknowledged of your letter dated January 9th relative judgment of $500 and costs against Howard Findlay who is employed by this company as a tug boat captain. We will have Mr. Findlay call at your office to talk the matter over with you, but as a matter of information we beg to advise that Mr. Findlay is a licensed deck officer on a United States registered vessel, and under the terms of the La Follette Act his wages cannot be garnisheed."

By Mr. Ockford:

Q. At this time of this proceeding, Mr. Blackton, just what position, if any, did Mr. Findlay hold with the company?

A. Findlay at that time was captain on the Tug Boat "Waverly."

Q. And from that time on down to the present time he has continued to be employed by the Erie?

A. Not entirely as captain. On account of reduction of forces he has been back as mate and captain, on account of the depression.

Q. But he has been employed as either captain or mate?

A. Either captain or mate.

Q. On an Erie tug boat?

A. Yes.

Q. And has his employment been on the one tug boat or did he shift from tug to tug?

A. Sometimes they shift from tug to tug.

[fol. 19] Q. These tugs are under your jurisdiction?

A. Yes, sir.

Q. And Mr. Findlay is under your orders?

A. Yes, sir.

Q. This Tug "Waverly" is a typical tug of the Road.

A. Yes, sir.

Q. It is not an ocean-going tug?

Mr. McDevitt: Please don't lead the witness.

Q. (Continuing.) What kind of tug is the "Waverly" and the other tugs upon which Mr. Findlay works from time to time?

A. They are regular harbor tug boats.

Q. Generally speaking from point to what point do these boats operate?

A. Well, any place in New York Harbor, in the lighterage limits of New York Harbor. That would be from Edgewater here to Harlem, Brooklyn and Bayonne. It is a large tug and could go to sea.

Q. Where does th- Erie have its tugs stationed when they are not going out?

A. Dock 4, Jersey City, and at Weehawken.

Q. And the Erie also has terminals in New York City?

A. Yes.

Q. At what point?

A. Duane Street, New York. Do you want them in New York?

Q. Yes.

A. Twenty-eighth Street, New York, Pier 7, East River, Wallabout, 149th Street, Harlem River.

Q. And below Bayonne how far do the tugs go?
A. Oh, they go out to Port Ivory, Staten Island.
Q. Do they go to Perth Amboy?
A. No, they wouldn't go to Perth Amboy.
[fol. 20] Q. Do they go into Elizabeth or Newark?
A. They are licensed to go there but we don't have any business down that way.
Q. Hackensack River and the Passaic River?
A. No.
Q. They do at times?
A. No, they don't.
Q. Has this Tug "Waverly" a place where it is assigned when not in actual operation?
A. Yes.
Q. Where is its berth?
A. The Marine Yard, Weehawken.
Q. Mr. Findlay does not live on the boat, does he?
A. No, sir.
Q. Do you know wh-re he lives, as a matter of fact, in what town?
A. I think he lives in Jersey City.
Q. Generally what are his hours of duty?
A. His hours of duty are from four to twelve - four p. m. to twelve p. m.
Q. He reports for duty at Jersey or Weehawken?
A. Yes, Jersey City.
Q. He goes off duty?
A. Twelve p. m.
Q. At midnight at Jersey City or Weehawken?
A. That is right, Dock 8 in Jersey City.

Cross-examination.

By Mr. McDevitt:

Q. You said that you did not deduct any money from the pay of Mr. Findlay in accordance with the order of the court that was served upon you?
A. Yes.
Q. You didn't deduct any money?
A. No, I didn't.
Q. You are in charge of that particular department and Mr. Findlay works under you, doesn't he?
A. Yes.

[fol. 21] Q. Do you know who is the treasurer of the Erie Railroad?

A. Yes.

Q. Who is?

A. Mr. J. G. Walsh.

Q. Where is the office located?

A. Cleveland, Ohio.

Q. How does Mr. Findlay get paid at the time this execution was served upon him?

A. By check received from Cleveland, Ohio.

Q. By check from Cleveland, Ohio, payable to his order?

A. To his order.

Q. Do these payroll checks come to your department for the different men in your department?

A. Yes.

Q. Did you hand them out or did the men call for them?

A. The men called for them. We handed them to them as they came in.

Q. They passed through your department?

A. Yes, sir.

Q. This tug "Waverly" is a United States registered tug?

A. Yes, sir.

William Seaman, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Ockford:

Q. Where do you live, Mr. Seaman?

A. Wayne Street, Jersey City.

Q. What number?

A. 446.

Q. You have an official position in this county, have you not?

A. Yes, sir.

Q. What is your position?

A. Harbor Master of Hudson County.

[fol. 22] Q. Is that a state or a county position.

A. It is an appointment made by the Governor.

Q. And you are assigned for the county is that it?

A. For the county.

Q. How long have you been harbor master?

A. About four y-ars.

Q. You are familiar with the harbors and ports of Hudson County, are you not?

A. Yes, sir.

Q. In what specific places do you have jurisdiction over in respect to your duties?

A. Why, the law gives me jurisdiction over the harbors of the county.

Q. Just mention the principal ones, please.

A. Jersey City, Hoboken, Edgewater and Bayonne.

Q. Is Weehawken one of them?

A. Yes.

Q. And each of these places are separate ports, are they not, within your jurisdiction?

A. Yes, sir.

Q. They are all in New Jersey?

A. Yes.

(Plaintiff rested.)

MOTION FOR NON-SUIT

Mr. McDevitt: At this time, if your Honor please, I respectfully move for a non-suit in behalf of the defendant Charles F. Blackton on the following grounds:

1. That the subject matter of this suit is maritime, and inasmuch as Congress has the paramount power to fix and determine maritime laws which will prevail throughout the country, the State statutes are without effect.

[fol. 23] 2. That the execution for wages is directed against the Erie Railroad Company. That is the general situation contained in the state of demand and the affidavits attached thereto. It is not directed against this defendant. Consequently, this defendant is not the proper party to this suit.

3. That the evidence before this Court fails to show that this defendant is the proper officer of the Erie Railroad Company who failed or refused to pay the amount of the indebtedness to the officer, that is the constable, who presented the execution.

4. That Section 601 of the United States Code Annotated exempts seamen from executions.

Section 601 reads as follows:

(Quoting Section 601.)

(After hearing argument on the motion for non-suit, the Court stated that it reserved its decision on the motion and asked both sides to submit briefs.)

[fol. 24] July 15, 1935. Eleven a. m.

(Office of Frank H. Eggers, 26 Journal Square, Jersey City, New Jersey.)

Present:

Frank H. Eggers, J.
Aaron Gordon, Patrick F. McDevitt.

(James S. Slavin was sworn as stenographer.)

Mr. McDevitt: If your Honor will recall, this matter was tried before you on May 9, 1935. Briefs were then submitted. Subsequently, counsel was notified on June 24——

The Court: It was tried before me and a motion for non-suit was made and you agreed to submit it on that.

Mr. McDevitt: That is right. On June 24 counsel was notified that the motion for a non-suit on May 9 was denied. I would like to take an exception to the Court's refusal to grant the non-suit.

The Court: I grant an exception.

MOTION FOR DIRECTION OF VERDICT

Mr. McDevitt: Defendant rests, and at this time I respectfully move for a direction of a verdict for the same reasons urged in the application for a non-suit.

[fol. 25] Mr. Gordon: The same argument advanced by the plaintiff in opposition to the motion for a non-suit is advanced in opposition to this motion for a direction of a verdict.

The Court: I will deny the motion for a direction of a verdict.

Mr. McDevitt: Your Honor will allow me an exception.

Mr. Gordon: May I ask your Honor then to enter judgment for the sum of $100 plus interest thereon from July 10, 1934, to date, amounting to $6.

The Court: On how much?

Mr. Gordon: $100 is the amount——

The Court: I thought it was five hundred.

Mr. Gordon: No, it wasn't five hundred because I had to sue each time as the money became due.

The Court: All right.

Mr. McDevitt: $106.

The Court: Judgment will be entered for the plaintiff in the sum of $106 and costs.

Mr. Gordon: A hundred dollars plus six per cent per annum interest on said sum from July 10, 1934, to date. The interest amounts to $6.

The Court: Judgment for the plaintiff for $106.

[fol. 26] Certification of stenographers omitted in printing.

CERTIFICATION OF JUDGE

I, Frank H. Eggers, Judge of the First District Court of the City of Jersey City, County of Hudson, State of New Jersey, do hereby certify that the foregoing is a transcript of the evidence given upon the trial of the case of Aaron Gordon, plaintiff, vs. Charles F. Blackton, defendant, on the [fol. 27] ninth day of May, 1935, and the fifteenth day of July 1935, as certified to by H. Richard Woebse and James S. Slavin, the stenographers appointed to report such evidence stenographically.

July 22, 1935.

Frank H. Eggers.

EXHIBIT P-1

Erie Railroad Company,

New York District,

Jersey City, N. J.

January 10th, 1934.

C. F. Blackton, Supt. Marine Transportation. Mr. Aaron Gordon, 591 Summit Ave., Jersey City, N. J.

DEAR SIR:

Receipt is acknowledged of your letter dated January 9th relative judgment of $500.00 and costs against Horace Findlay who is employed by this Company as a Tugboat Captain.

We will have Mr. Findlay call at your office to talk the matter over with you, but as a matter of information, beg to advise that Mr. Findlay is a licensed deck officer on a U. S. S. Registered vessel and under the terms of the Laffollate Act, his wages cannot be garnisheed.

Very truly yours, C. F. Blackton.

[fol. 28] EXHIBIT P-3(a)

FIRST DISTRICT COURT OF JERSEY CITY

AARON GORDON, Plaintiff,

vs.

HORACE FINDLAY, Defendant

On Contract

STATE OF DEMAND

Plaintiff demands of the defendant the sum of Five Hundred ($500.00) Dollars for that:

1. On or about the 24 day of April, 1930, the defendant retained the plaintiff to represent his brother, John Findlay, at the trial of an indictment for robbery returned by the Grand Inquest in and for the County of Hudson, against the defendant's brother, John Findlay, and for his services as such, the said defendant agreed to pay to the plaintiff the sum of Five Hundred ($500.00) Dollars.

2. The plaintiff represented the said defendant's brother at his trial under such indictment for robbery before the Hudson County Court of Quarter Sessions.

3. On the 6th day of November, 1933, the said defendant not having paid any part of such sum of Five Hundred ($500.00) Dollars theretofore to the plaintiff, came to the plaintiff's law office at No. 880 Bergen Avenue, in the City of Jersey City, County of Hudson and State of New Jersey and retained the plaintiff to act as counsel for his said brother John Findlay, in connection with an indictment for robbery returned against his said brother by the Grand Inquest in and for the County of Essex and in consideration of the [fol. 29] plaintiff's agreement to represent his said brother in con-ection with the said latter indictment, without any additional charge, the said defendant agreed to pay the said sum of Five Hundred ($500.00) Dollars, which was long past due, to the plaintiff, reducing the said agreement to writing.

4. The plaintiff thereupon proceeded under the said agreement to obtain the release of the said defendant's brother, John Findlay from the Essex County Jail, where he was held under such latter indictment, obtaining the release of the said accused in the plaintiff's custody.

5. The said plaintiff thereupon made demands on the defendant for the payment of said sum of Five Hundred ($500.00) Dollars, but the defendant has repeatedly refused and neglected to pay the same and the said sum of Five Hundred ($500.00) Dollars is now justly due and owing to the plaintiff from the defendant.

6. The plaintiff is an Attorney and Counsellor at Law of New Jersey, duly admitted to practice as such by the New Jersey Supreme Court and the said sum of Five Hundred ($500.00) Dollars is due to the plaintiff under such agreement as and for his legal services hereinbefore mentioned.

Judgment will, therefore, be demanded in the sum of Five Hundred ($500.00) Dollars together with lawful interest and costs of this suit.

Aaron Gordon, Attorney Pro Se.

[fol. 30] EXHIBIT P-3(b)

FIRST DISTRICT COURT OF JERSEY CITY

AARON GORDON, Plaintiff,

vs.

HORACE FINDLAY, Defendant

AFFIDAVIT TO OBTAIN EXECUTION AGAINST WAGES, ETC.

STATE OF NEW JERSEY,
County of Hudson:

Aaron Gordon, being duly sworn, according to law, upon his oath, deposes and says, that he is the plaintiff and judgment creditor in the above stated cause; that on the 9th day of January, nineteen hundred and thirty-four, judgment was recovered by plaintiff in said cause against Horace Findlay, the defendant and judgment debtor for the sum of $529.20 damages and costs; that the said defendant is employed by the Erie Railroad Company, and deponent is credibly informed and verily believes that his wages, debts, salaries, income from trust funds, or profits due him amount to the sum of $100.00, he being paid every two weeks, and that the said sum of $100.00 each pay day is now due and owing to the said Horace Findlay, the judgment debtor and will hereafter become due and owing to him.

Wherefore deponent applies for the issuance of an execution against said wages, debts, earnings, salaries, income from trust funds or profits, according to the statute in such [fol. 31] case made and provided, and states that no previous application has been made for this order.

Aaron Gordon.

Sworn and subscribed to before me this 2nd day of February, 1934. Herman Williner, An Attorney at Law, of New Jersey.

EXHIBIT P-3(c)

FIRST DISTRICT COURT OF JERSEY CITY

AARON GORDON, Plaintiff,

vs.

HORACE FINDLAY, Defendant

ORDER FOR EXECUTION AGAINST WAGES, ETC.

The affidavit of Aaron Gordon, the above named plaintiff, having been filed herein, showing that a judgment was recovered by said plaintiff on the 9th day of January, 1934, in said cause against Horace Findlay, the above named defendant, for the sum of $529.20 damages and costs, and thereafter execution was issued thereon and has been returned wholly unsatisfied and that it remains wholly unpaid; that said defendant is employed as a licensed deck officer by the Erie Railroad Company and that his wages, [fol. 32] debts, earnings, salary and income from trust funds or profits due and owing to him amount to the sum of $100.00 or more every two weeks, and that the same is payable to him by the Erie Railroad Company, its servant or agent and is now due and owing to him; and said affidavit having been considered:

It is on this 2nd day of February, 1934, ordered, that execution do issue against the wages, debts, salary and income from trust funds or profits due and owing to the said judgment debtor from the Erie Railroad Company, and the said Erie Railroad Company is ordered to hold from the wages the sum of $10.00 every pay day, the said amount being not more than ten per centum of the weekly pay of Horace Findlay; and that the said Erie Railroad Company be and is hereby ordered to pay the sum so held as aforesaid, to the sergeant-at-arms by whom said execution is presented until the full sum of the judgment and costs of said suit, together with costs hereof, and interest from the date of said judgment until the date of final payment, be fully paid and satisfied; and the said Erie Railroad Company, its servants and agents, are hereby restrained from paying the said money to the said defendant or to any other person than the sergeant-at-arms; and it is further ordered that the said execution from its presentation shall be a con-

tinuing lien and levy against the said wages, debts, earnings, salary and income from trust funds or profits, as the same become due, until the full amount herein specified shall be fully paid and satisfied, together with subsequent costs and charges.

August Ziegener, Judge of the First District Court of Jersey City.

[fol. 33] EXHIBIT P-3(d)

Schedule "A"

HUDSON COUNTY, ss:

The State of New Jersey to the Sergeant-at-Arms of the First District Court of Jersey City;

Whereas, on the 9th day of January, 1934, Aaron Gordon recovered a judgment in the First District Court of Jersey City against Horace Findlay for the sum of $529.20 damages and costs, and whereas the said judgment remains wholly unsatisfied, and the amount remaining due on said judgment is in the sum of $529.20 besides execution fees and interest from the 9th day of January, 1934, until fully paid and satisfied; and

Whereas, Horace Findlay is at present employed by the Erie Railroad Company, and has wages, debts, earnings, salary and income from trust funds or profits due and owing to him to the amount of One Hundred ($100.00) Dollars or more every two weeks, and that the same is payable to him by the said Erie Railroad Company, and the same is now due and owing to the said Horace Findlay and shall hereafter become due and owing to him; and

Whereas, an Order has been made in the cause by the said First District Court on the 2nd day of February, 1934, directing the issuing of this writ, said writ to become a lien and continuing levy upon wages, debts, earnings, salary and income from trust funds or profits which become due to the said Horace Findlay from the said Erie Railroad Company to the amount of $10.00 every two weeks, and upon each payment of such wages, debts, earnings, salary and [fol. 34] income from trust funds or profits due.

Now, therefore, we command you that you satisfy said judgment and costs with interest thereon, together with

your fees, out of the wages, debts, earnings, salary and income from trust funds or profits due to the said judgment debtor, Horace Findlay, now due to him and which shall hereafter become due and owing to him from the Erie Railroad Company, according to the statute in such case made and provided; and that this execution and levy to be made thereunder shall be a line and continuing levy upon the wages, debts, earnings, salary and income from trust funds or profits due or to become due to the said Horace Findlay from the said Erie Railroad Company to the amount of $10.00 every two weeks' until this execution and the expenses thereof are fully paid and satisfied; and that when this writ is satisfied you make return of the proceedings had thereon.

Witness, August Ziegener, Esq., Judge of the said Court, at Jersey City, aforesaid, and the seal of the Court the 6th day of February, in the year of our Lord, one thousand nine hundred and thirty-four.

B. Frances Marron, Clerk.

[fol. 35] EXHIBIT P-3(e)

Erie Railroad Company

New York, Susquehanna & Western Railroad Co.

The New Jersey and New York Railroad Co.

Chicago and Erie Railroad Co.

Midland Building

191 Prospect Ave., N. W.

Cleveland, Ohio

Office of the Treasurer

J. G. Walsh, Treasurer. E. F. Morgenroth, Asst. Treas.

February 20th, 1934.

B. Frances Marron, Clerk, First District Court, Jersey City, N. J.

DEAR MADAM:

Referring to garnishee execution issued in the First District Court of Jersey City, on February 6th, 1934, in the matter of Aaron Gordon vs. Horace Findlay:

This defendant is employed as Captain on a United States Registered vessel in our Marine Department, and under the provisions of Section 601 of the United States Code, Annotated; his wages are exempt from attachment or arrestment. We must, therefore, decline to honor the execution, which is returned herewith.

Yours truly, (Signed) J. G. Walsh, (S) Treasurer.

[fol. 36] In First District Court of Jersey City

Aaron Gordon, Plaintiff,

vs.

Charles F. Blackton, Defendant

Notice of Appeal—Filed July 23, 1935

To Aaron Gordon, Esq., Attorney of Plaintiff.

Sir:

Please take notice, that the defendant Charles F. Blackton, hereby appeals to the New Jersey Supreme Court from the judgment of the First District Court of the City of Jersey City, granted in the above stated cause on the 15th day of July, 1935.

Dated July 19, 1935.

Respectfully, Collins & Corbin, Attorneys of Defendant.

(Service acknowledged July 24, 1935.)

Aaron Gordon, Attorney of Plaintiff.

[fol. 37] In Supreme Court of New Jersey

Aaron Gordon, Plaintiff-Appellee,

vs.

Charles F. Blackton, Defendant-Appellant

On Appeal from the First District Court of Jersey City

Specifications of Determinations and Directions Appealed from—Filed August 22, 1935

Charles F. Blackton, defendant-appellant herein, writes down his Specifications of Determinations and Directions

of the First District Court of Jersey City with respect to which he is dissatisfied in point of law:

1. The trial court erred in refusing to enter a judgment of non-suit in favor of the defendant and against the plaintiff when thereunto moved, whereas said motion should have been granted for one or more of the following reasons urged in support thereof:

(a) That the subject matter of the action is maritime in nature and Congress has the paramount power to fix and determine maritimes laws which prevail throughout the country and the state statute is without effect;

(b) That the execution for wages was directed to the Erie Railroad Company, a corporation, and this defendant, Charles F. Blackton, was not a proper party to the suit;

[fol. 38] (c) That the evidence before the court failed to show that Charles F. Blackton was the proper officer of the Erie Railroad Company who failed or refused to pay the amount of the indebtedness to the constable of the First District Court of Jersey City who presented the execution;

(d) That under the provisions of Section 601 set forth in Title 46 of the United States Code, Annotated, the wages of seamen are exempt from execution. Section 601 provides:

"No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this chapter. This section shall apply to fishermen employed on fishing vessels as well as to seamen: Provided, That nothing contained in this or any preceding section shall interfere with the order by any court regarding the payment by any seaman of any part of his wages for the support and maintenance of his wife and minor children. (Mar. 4, 1915, c. 153, Sec. 12, 38 Stat. 1169.)"

[fol. 39] 2. The trial court erred in refusing to direct a verdict in favor of the defendant and against the plaintiff when thereunto moved, whereas said motion should have been granted for one or more of the following reasons urged in support thereof:

(a) That the subject matter of the action is maritime in nature and Congress has the paramount power to fix and determine maritime laws which prevail throughout the country and the state statute is without effect;

(b) That the execution for wages was directed to the Erie Railroad Company, a corporation, and this defendant, Charles F. Blackton, was not a proper party to the suit;

(c) That the evidence before the court failed to show that Charles F. Blackton was the proper officer of the Erie Railroad Company who failed or refused to pay the amount of the indebtedness to the constable of the First District Court of Jersey City who presented the execution.

(d) That under the provisions of Section 601 set forth in Title 46 of the United States Code, Annotated, the wages of seamen are exempt from execution. Section 601 provides:

"No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or ap-
[fol. 40] prentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this chapter. This section shall apply to fishermen employed on fishing vessels as well as to seamen: Provided, That nothing contained in this or any preceding section shall interfere with the order by any court regarding the payment by any seaman of any part of his wages for the support and maintenance of his wife and minor children. (Mar. 4, 1915 c. 153, Sec. 12, 38 Stat. 1169.)"

Collins & Corbin, Attorneys for Defendant-Appellant.

[fol. 41] In Supreme Court of New Jersey, October Term, 1935

No. 415

Aaron Gordon, Plaintiff-Appellee,

vs.

Charles F. Blackton, Defendant-Appellant

Submitted October 11, 1935. Decided August 27, 1936

Syllabus

1. Seamen engaged in ordinary coastwise trade held not entitled to exemption from execution against wages (42 U. S. C. A. Sections 544, 601).

2. The defendant Blackton was the agent of the Erie Railroad Company and head of its department in which the judgment debtor was employed. The superintendent of the corporation directed the constable to the defendant when he went to serve the plaintiff's execution against wages. The employee's pay checks cleared through defendant's hands. Defendant was served with the execution and accepted service. The Treasurer and principal disbursing officer of the corporation ratified such service as correct by acknowledging it and acting with respect thereto. Neither defendant nor the Treasurer of the corporation raised any question of the propriety of the service, but both [fol. 42] declined to honor the execution alleging as their only reason therefor that the wages of the employee were exempt from execution; Held, that, under Chapter 204 P. L. 1924, the defendant Blackton was the proper defendant and was liable to the judgment creditor.

On Appeal from First District Court of Jersey City

Before Justices Trenchard, Heher and Perskie

For the defendant-appellant, Collins & Corbin, (Edward A. Markley and Patrick F. McDevitt, of Counsel).

For the plaintiff-appellee, Aaron Gordon (John W. Ockford, of Counsel).

OPINION—Filed August 27, 1936

The opinion of the Court was delivered by

TRENCHARD, J.:

This is defendant's appeal from plaintiff's judgment, entered by the judge sitting without a jury, based upon defendant's failure to honor an execution against wages.

Plaintiff has a judgment and execution against one Findlay, an employee of the Erie Railroad Company, which execution was not honored. Hence this suit. The substantial question is whether the employee's wages are exempt under the Federal statute. Appellant contends they are and appellee contends that they are not.

We think that the wages of Findlay, a seaman engaged in the coastwise trade, are not exempt from execution.

It appears that Findlay, the judgment debtor, was and is employed either as "captain or mate" on a tug boat of [fol. 43] the Erie Railroad Company which plies in and about the Hudson River, both in the North River and East River branches thereof, along both sides of the River and crossing the River from New Jersey to New York and Brooklyn and vice-versa. The Hudson River and its two branches, the North River and East River, are navigable and are a part of New York Harbor. He was and is, therefore, engaged in the coastwise trade. The cases support this conclusion. Some of these are: Ravesies vs. U. S. 37 Fed. 447; Leary vs. Jersey City, 189 Fed. 419; Gibbons vs. Ogden, 9 Wheaten (U. S.) 1; Pacific Milling Co. vs. Portland, 133 Pacific 72. Thus in the case of Gibbons vs. Ogden, supra, Chief Justice Marshall said: "The coasting trade is a term well understood. The law has defined it; and all know its meaning perfectly. The act describes, with great minuteness, the various operations of a vessel engaged in it; and it cannot, we think, be doubted, that a voyage from New Jersey to New York, is one of these operations." In the Ravesies case it was said that the words "coasting trade" and "coastwise trade" were used synonymously. In Leary vs. Jersey City, supra, it was stated that "A harbor is a port or haven for ships, a sheltered recess in the coast line of a sea, gulf, bay, or lake, most frequently at the mouth of a river. * * *." In Pacific Milling Co. vs. Portland, supra, it was declared that "the word 'sea' has been held to mean 'not only high-sea,

but arms of the sea, waters flowing from it into ports and havens, and as high upon rivers as the tide ebbs and flows'."

Now Findlay, being engaged in the coastwise trade (and we assume as a seaman) cannot claim the exemption allowed seamen because, as appellee contends, Section 544 [fol. 44] of the U. S. Code, Title 46 expressly takes seamen engaged on vessels in the coastwise trade out of the exemption and in fact limits Section 601 to seamen engaged between east coast, west coast or foreign trade. Duggar vs. Mobile & Gulf Co., 140 Southern 611 and 614 (2 decisions); Inter-Island Co. vs. Byrne, 239 U. S. 459, 36 S. Ct. Rep. 132, 60 L. Ed. 382. Such was the conclusion reached in those cases after a discussion and consideration of the exemption originally given by Act of Congress June 7, 1872, Section 61 (17 Stat. 276) to wages due to seamen, in view of the Act of Congress June 9, 1874 (18 Stat. 64, 46 U. S. C. A. Section 544). And we believe those cases amply support appellee's contention as to the limitation placed by Section 544 on Section 601. A complete recital of the historical development of the two sections and interpretive decisions is furnished by the Court in the Duggar case, 140 Southern 611. The earlier history is explained in Wilder vs. Inter-Island Nav. Co., 211 U. S. 239 and Inter-Island Co. vs. Byrne, 239 U. S. 459.

In the Duggar case the Court of Appeals of Alabama, by the decision rendered October 27, 1931, reviewed the entire history of legislation which culminated in Sections 544 and 601 of United States Code. The plaintiff in that suit sought to garnishee the wages paid by the Mobile & Gulf Navigation Co., to one Tindel, judgment-debtor, Tindel being employed by the Navigation Company as a pilot or mate on one of its vessels or tugs plying on the Alabama River and Mobile River. The Navigation Company set forth Section 601 as its basis for refusing to honor the execution. The Court held that Section 544 above mentioned, limited the application of Section 601 to seamen engaged in coast to coast or United States to Foreign Port trade and hence held the ganishment was effective as [fol. 45] against the wages of Tindel whose employment did not fall within the class of seamen engaged in coast to coast or United States to Foreign Port Trade. The exact basis of the decision is correctly set forth in the head note thus: "Seamen engaged in ordinary coastwise or river

trade are not entitled, under 46 U. S. C. A. § 601, to the exemption originally given by Act Cong. June 7, 1872, § 61 (17 Stat. 276) to wages due or accruing to any seaman or apprentice, since Act. Cong. June 9, 1874 (18 Stat. 64) (46 U. S. C. A. § 544), subsequently passed, provided that none of the provisions of the previous act should apply to sail or steam vessels engaged in the coastwise trade, with specified exceptions, and the limitation, as well as the original exemption, was preserved in revisions, and was carried forward into the codification known as the United States Code, after decisions had construed the exemption as not applying to wages of seamen engaged in ordinary coastwise trade." That decision is precisely in point here.

The only other point made by the appellant is that the evidence failed to show that Blackton was the proper defendant to this suit, in that the statute provides for a suit against the agent or any other proper officer.

We see no merit in this point.

This action was instituted pursuant to Chapter 204 of Laws of 1924, Section 12, p. 432), a supplement to the District Court act. That section discloses that it applies not only to an individual, but to a corporation which is, or may become, indebted to a judgment debtor, and it provides in the case of such a corporation that "it shall be the duty of any * * * agent, treasurer, or other fiduciary officer * * * to whom said execution shall be pre-
[fol. 46] sented" to pay over under the execution; and "if such * * * or the proper officer * * * to whom said execution shall be presented shall fail or refuse to pay * * * he shall be liable to an action therefor by the judgment creditor * * *."

It will be seen thereby that the act merely requires service of the writ on "agent, treasurer or other fiduciary officer of a * * * corporation" and if such a one to whom the execution is presented shall fail or refuse to pay, he shall be liable.

Now the evidence tended to show that Blackton is the agent of the Erie Railroad Company as head of its Marine Department, the department in which Findlay, the judgment debtor, was employed. Blackton was the man to whom the constable was directed by the superintendent of the Erie Terminal when he went to serve the writ. Findlay's pay checks cleared through Blackton's hand; he was

Findlay's boss; he was served with the execution and accepted service. The defendant Blackton was the person designated by the principal official at the Erie Terminal in Jersey City to receive the writ. The Treasurer and principal disbursing officer of the Erie Company ratified the service as being correct by acknowledging such service and acting with respect thereto. Neither the superintendent, nor Blackton himself, nor the Treasurer of the Erie Railroad raised any question of the propriety of the service, but both Blackton and the Treasurer declined to honor the execution alleging as their only reason therefor that the wages of Findlay were exempt from execution.

We conclude that the defendant Blackton was the proper defendant and was liable to the judgment creditor.

The judgment will be affirmed, with costs.

[fol. 47] In Supreme Court of New Jersey

Aaron Gordon, Plaintiff-Appellee,

vs.

Charles F. Blackton, Defendant-Appellant

On Appeal from First District Court of Jersey City

Judgment of Affirmance—Entered September 10, 1936

This cause having been duly submitted on briefs at the October Term, 1935, of this Court by Collins & Corbin, Edward A. Markley and Patrick F. McDevitt, of counsel for the appellant, and Aaron Gordon and John W. Ockford, of counsel for appellee, and the Court having considered the record and judgment below and the specifications of determinations with which appellant was dissatisfied in point of law, and finding no error in the record and judgment of the Court below:

It is thereupon, on this 10th day of September 1936, ordered and adjudged that the judgment of the First District Court of Jersey City, appealed from in this case, be affirmed with costs to be paid by the appellant; and that the record be remitted to the First District Court of Jersey City

to be proceeded with in accordance with this judgment and the practice of said Court.

Entered Sept. 10, 1936.

On motion of Aaron Gordon, Attorney for Appellee.

(Service acknowledged Sept. 14, 1936.)

[fol. 48] In Supreme Court of New Jersey

[Title omitted]

Notice of Appeal—Filed September 25, 1936

To Aaron Gordon, Esquire, Attorney for Plaintiff, 591 Summit Avenue, Jersey City, N. J.

Sir:

Take notice that the defendant, Charles F. Blackton, appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause.

Dated September 24, 1936.

Respectfully, Collins & Corbin, Attorneys for Defendant.

(Served September 24, 1936.)

[fol. 49] In Court of Errors and Appeals of New Jersey

[Title omitted]

Grounds of Appeal—Filed October 23, 1936

To Aaron Gordon, Esq., 358 Central Avenue, Jersey City, N. J., Attorney for Plaintiff-Respondent.

Sir:

The defendant-appellant, Charles F. Blackton, writes down the following grounds of appeal:

The Supreme Court erred in affirming the judgment of the First District Court of Jersey City, whereas said Supreme Court should have reversed the judgment of the First Dis-

trict Court of Jersey City for one or more of the following reasons urged in support of said reversal:

(a) That the subject matter of the action is maritime in nature and Congress has the paramount power to fix and determine maritime laws which prevail throughout the country and the state statute is without effect;

(b) That the execution for wages was directed to the Erie Railroad Company, a corporation, and this defendant, Charles F. Blackton, was not a proper party to the suit;

[fol. 50] (c) That the evidence before the Court failed to show that Charles F. Blackton was the proper officer of the Erie Railroad Company who failed or refused to pay the amount of the indebtedness to the constable of the First District Court of Jersey City who presented the execution;

(d) That under the provisions of Section 601 set forth in Title 46 of the United States Code, Annotated, the wages of seamen are exempt from execution. Section 601 provides:

"No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any Court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this chapter. This section shall apply to fishermen employed on fishing vessels as well as to seamen: Provided, that nothing contained in this or any preceding section shall interfere with the order by any court regarding the payment by any seaman of any part of his wages for the support and maintenance of his wife and minor children. (Mar. 4, 1915, c. 153 Sec. 12, 38 Stat. 1169.)"

Dated October 22, 1936.

Respectfully, Collins & Corbin, Attorneys for Defendant-Appellant.

(Served October 22, 1936.)

[fol. 51] Doc. No. 12199.

STATE OF NEW JERSEY

COURT OF ERRORS AND APPEALS, FEBRUARY TERM, 1937

Appeal from Supreme Court

No. 10 of February Term, 1937

AARON GORDON, Respondent,

and

CHARLES F. BLACKTON, Appellant

Date: Apr. 30, 1937.

The Chancellor, Presiding

Opinion by Below

Check List	Affirm	Reversal	Modify
The Chancellor	1	...	...
" Chief Justice	1	...	...
Mr. Justice Parker	1	...	...
" " Lloyd	1	...	...
" " Case	1	...	...
" " Bodine	1	...	...
" " Donges	1	...	...
Judge Hetfield	1	...	...
" Dear	1	...	...
" Wells	1	...	...
" WolfsKeil	1	...	...
" Rafferty	1	...	...
" Cole	1	...	...
	—	—	—
Totals	...	...	...

Endorsed: "Filed Apr. 30, 1937. Thomas A. Mathis, Clerk."

[fol. 52] NEW JERSEY COURT OF ERRORS AND APPEALS,
FEBRUARY TERM, 1937

No. 10

AARON GORDON, Respondent,

vs.

CHARLES F. BLACKTON, Appellant

Appeal from Supreme Court

Per CURIAM:

The judgment under review herein should be affirmed for the reasons expressed in the opinion delivered by Mr. Justice Trenchard in the Supreme Court, reported in 117 N. J. L. 40.

Endorsed: "Filed Apr. 30, 1937. Thomas A. Mathis, Clerk."

[fol. 53] [Endorsed:] 9141. No. 10, February Term, 1937. New Jersey Court of Errors and Appeals. Aaron Gordon, Respondent, — Charles F. Blackton, Appellant. Per Curiam.

[fol. 54] NEW JERSEY COURT OF ERRORS AND APPEALS,
FEBRUARY TERM, 1937

No. 10

Between

AARON GORDON, Respondent,

vs.

CHARLES F. BLACKTON, Appellant

On Appeal from Supreme Court.

Order on Affirmance of Judgment

This cause having been duly argued at the February Term, 1937 of this court by Collins and Corbin, Edward A. Markley, of counsel for the appellant and Aaron Gordon

and John W. Ockford, of counsel for the respondent, and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court—

It is thereupon, on this thirtieth day of April in the year of our Lord one thousand nine hundred thirty-seven, ordered and adjudged that the judgment of the Supreme Court, removed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of

Aaron Gordon, Attorney for Respondent.

[Endorsed:] New Jersey Court of Errors and Appeals, February Term, 1937. Aaron Gordon, vs. Charles F. Blackton. On Appeal from Supreme Court. Order Affirming Judgment. Aaron Gordon, Att'y. Filed May 6, 1937. Thomas A. Mathis, Clerk.

[fol. 55] STATE OF NEW JERSEY

[Seal]

COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

I, Thomas A. Mathis, Secretary of State of the State of New Jersey and Ex-Officio Clerk of the Court of Errors and Appeals, do hereby certify, that the foregoing is a true copy of the Transcript of the Proceedings, Check List, Per Curiam Opinion and Order of Affirmance of Judgment in the case of Aaron Gordon, Respondent vs. Charles F. Blackton, Appellant, as the same is taken from the originals on file in my office.

Witness my hand and seal of said Court, this fourth day of June, A. D., 1937.

Thomas A. Mathis, Clerk. (Seal of the Secretary of the State of New Jersey.

[fol. 56] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1937

The petition herein for a writ of certiorari to the Court of Errors and Appeals of the State of New Jersey is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration and decision of this application.

Endorsed on cover: File No. 41,648. New Jersey Court of Errors and Appeals. Term No. 167. Charles F. Blackton, petitioner, vs. Aaron Gordon. Petition for a writ of certiorari and exhibit thereto. Filed June 23, 1937. Term No. 167, O. T., 1937.

(1948)

FILE COPY

Office - Supreme Court, U. S
FILED
JUN 23 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 167

CHARLES F. BLACKTON,

Petitioner,

vs.

AARON GORDON.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY. AND BRIEF IN SUPPORT THEREOF.

CLEMENT K. CORBIN,
Counsel for Petitioner.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Statement of the case	1
Questions presented	3
Reasons for the petition	3
Brief in support of petition	5
Argument	5
I. The wages of seamen including those engaged in coastwise trade are exempt by Federal law from execution	5
II. A master of a vessel is a seaman within the meaning of Section 12 of the Act of March 4, 1915, Chapter 153, Title 46, United States Code Annotated, Section 601	10
Conclusion	12

Table of Cases Cited.

Burns v. *Fred L. Davis Co.*, 271 Fed. 439	7, 9
Duggar v. *Mobile & Gulf Co.*, 224 Ala. 359, 140 So. 614	5
Duggar v. *Mobile & Gulf Co.*, 239 U. S. 459	9
Inter-Island Steel Navigation Co., Ltd., v. *Byrne*, 239 U. S. 459	5, 8
Manufacturers Trust Co. v. *Anderson*, 287 N. Y. Supp. 178	8
Migliaccio v. *Cappola*, 289 N. Y. Supp. 981	8
Olson v. *Mellon*, 4 Fed. Supp. 947	10
Ornstein v. *Pittsburgh S. S. Co.*, 209 Ill. App. 202	8
Smiley v. *Holm*, 285 U. S. 355	10
Uravic v. *F. Jarka Co.*, 282 U. S. 234	11
Wilder v. *Inter-Island Steam Navigation Co.*, 211 U. S. 239	7

Statutes Cited.

	Page
Act of June 7, 1872 (17 Stat. 262-276) (Rev. Stat. 4536)	6
Act of June 9, 1874 (Chap. 260, 18 Stat. 64) (46 U. S. C. A. 544)	3, 8
Act of March 4, 1915, Sec. 12 (38 Stat. 1169), (46 U. S. C. A. 601)	2, 3, 6, 9, 11
Act of June 30, 1926, Chap. 712, 44 Stat. 777	9
New Jersey Statute (Chapter 204, P. L. 1924, Section 12, 1 Cum. Supp. to Compiled Stats. p. 982)	2
Revised Statutes, Sec. 4612 (46 U. S. C. A. 713)	11
Rose's Notes on U. S. Reports (1926) Rev. and Supp., Vol. 5, p. 504	8
U. S. C. A., Title 28, Sec. 344(b)	3
U. S. C. A., Title 46, Sec. 544	2, 3
U. S. C. A., Title 46, Sec. 601	3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 167

CHARLES F. BLACKTON,

Petitioner,

vs.

AARON GORDON.

PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY COURT OF ERRORS AND APPEALS.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Charles F. Blackton (hereinafter called petitioner), respectfully presents this petition for a writ of certiorari to review the final judgment of the New Jersey Court of Errors and Appeals, the highest Court of the State of New Jersey in which a decision in the above entitled cause could be had, rendered April 30, 1937. (R. 52.)

Statement of the Case.

On January 9, 1934, respondent recovered a judgment of $500 and costs against Horace Findlay. On February 2, 1934, he obtained an order for execution against wages (R.

12). This order was against the wages and income due to Findlay from his employer, Erie Railroad Company, and required the railroad company to pay over to the constable of the court the sum of $10 every pay day until the judgment was satisfied (R. 31-32, Exhibit P-3 (C)).

A copy of the writ was served on the petitioner who was superintendent of the marine department of the railroad company (R. 15). Findlay, at the time of the service of the writ, was employed as a captain of the tug Waverly, a United States registered vessel (R. 18-21). The Waverly operated within the lighterage limits of the New York Harbor (R. 19). His hours of duty were from 4 P. M. to 12 P. M. (R. 20). The petitioner did not deduct any part of Findlay's wages (R. 17). The treasurer of the railroad company by letter returned the writ and advised the clerk of the court that Findlay's employment exempted his wages from execution by virtue of the provisions of Section 601 of Title 46 of the United States Code Annotated (R. 35, Exhibit P-3 (E)).

Suit was then instituted by the respondent against the petitioner, predicated on the provisions of a New Jersey Statute (Chapter 204, P. L. 1924, Section 12, 1 Cum. Supp. to Compiled Stats., pg. 982), which made liable the proper officer of a corporation who failed or refused to pay over to the officer presenting the execution the percentage of the indebtedness as shown therein. Motions for nonsuit and direction of a verdict on the grounds that the wages of seamen were exempt from execution by virtue of the provisions of Section 601, Title 46 of the U. S. C. A. were denied. Judgment was entered in favor of the respondent and against the petitioner for the sum of $106 and costs (R. 22-25). Petitioner appealed to the New Jersey Supreme Court. This Court assumed that Findlay was a seaman but held, in affirming the judgment, that seamen engaged in coastwise trade were not entitled to the exemption provided for in Section 601 of Title 46, of the U. S. C. A., because Section 544 of Title

46 of the U. S. C. A. limited the provisions of Section 601 (R. 41-46).

Petitioner appealed the judgment of the New Jersey Supreme Court to the New Jersey Court of Errors and Appeals. The New Jersey Court of Errors and Appeals affirmed the judgment of the New Jersey Supreme Court for the reasons expressed in the opinion of the Supreme Court. (R. 52).

Questions Presented.

1. Whether Section 12 of the Act of March 4, 1915, Chap. 153, Title 46, United States Code Annotated, Sec. 601, is limited by the Act of June 9, 1874, Chap. 260, Title 46, United States Code Annotated, Sec. 544, so that the wages of seamen engaged in the coastwise trade are subject to seizure under execution issued out of a State court.

2. Whether the master of a vessel is a seaman within the meaning of Sec. 12 of the Act of March 4, 1915, Chap. 153, Title 46, United States Code Annotated, Sec. 601.

Reasons for the Petition.

The reasons for which this petition is presented are:

1. That the New Jersey Court of Errors and Appeals has rendered a decision where is drawn in question the validity of a State statute which is repugnant to the laws of the United States (Sec. 344 (b), Title 28, United States Code Annotated, p. 206).

2. The New Jersey Court of Errors and Appeals has decided a Federal question of substance not heretofore determined by this Court. (Rule 35, Sec. 5 (a), Title 28, United States Code Annotated, p. 424.)

3. The decision of the Court of Errors and Appeals, while in accord with a decision of the Supreme Court of

Alabama, is in conflict with the law as laid down in the Federal Court, and the law as laid down in the courts of the States of New York and Illinois, and the petitioner, who is a superintendent of marine transportation of a railroad company doing business in several of the States of the United States, requires the decision of this Court for guidance in such cases.

WHEREFORE your petitioner respectfully prays that a writ of certiorari issue to the New Jersey Court of Errors and Appeals and submits hereto annexed brief in support of his petition.

Respectfully submitted,

CLEMENT K. CORBIN,
Attorney for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 167

CHARLES F. BLACKTON,

Petitioner,

vs.

AARON GORDON.

BRIEF IN SUPPORT OF PETITION.

I.

The wages of seamen including those engaged in coastwise trade are exempt by Federal law from execution.

The New Jersey Court of Errors and Appeals in ruling that the wages of a seaman engaged in coastwise trade are exempt from execution, did so strictly on the decisions of *Inter-Island Steel Navigation Co. Ltd.* v. *Byrne*, 239 U. S. 459, and *Duggar* v. *Mobile & Gulf Co.*, 224 Ala. 359; 140 So. 614, 616, saying:

> "Such was the conclusion reached in those cases after a discussion and consideration of the exemption originally given by the Act of Congress, June 7th, 1872, Sec. 61, (17 Stat. 276) to wages due to seamen, in view of the Act of Congress June 9, 1874 (18 Stat. 64, 46 U. S. C. A. Sec. 544.)"

The New Jersey Court of Errors and Appeals did not take into consideration the fact that Section 61 of the Act of June 7, 1872, which became Section 4536 of the Revised Statutes entitled: "An act to authorize the appointment of Shipping Commissioners * * *" and which provided, (17 Stat. 262-276):

> "That no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court; * * *"

as limited by the Act of June 9, 1874, Chap. 260, (18 Stat. 64) which provided:

> "That none of the provisions of an act entitled 'An Act to appoint Shipping Commissioners * * *' shall apply to sail or steam vessels in the coastwise trade * * *"

was expressly repealed on March 4, 1915, by an Act entitled: "An Act to Promote the Welfare of America Seamen in the Merchant Service of the United States," Section 12 of which provides (38 Stat. 1169):

> "That no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding * * * any attachment, encumbrance, or arrestment thereon; * * * This section shall apply to fishermen employed on fishing vessels as well as to seamen; * * * Section forty-five hundred and thirty-six of the Revised Statutes of the United States is hereby repealed."

In failing to give consideration to the repealing section of the last mentioned statute, the Court of Errors and Appeals fell into error as to the effect of the decision of this Court in the case of *Inter-Island Steam Navigation Co.* v. *Byrne*, and overlooked the fact that the *Byrne* case which

was decided on facts arising prior to the effective date of the Act of March 4, 1915 held that the Act of 1872 was limited by the Act of 1874, but did not construe the Act of March 4, 1915. It is, therefore, obvious why Mr. Justice McReynolds in delivering the opinion of this Court in the *Byrne* case, when referring to the case of *Wilder* v. *Inter-Island Steam Navigation Co.*, 211 U. S. 239, wherein was reserved the question of whether the 1874 Act repealed the 1872 Act said, page 463 (italics ours):

> "The particular point now presented was reserved in Wilder v. Inter-Island Navigation Co., 211 U. S. 239, 245. *It has become of less importance since the Act of March 4, 1915, c. 153, 38 Stat. 1164, 1169, wherein the provisions of Sec. 61 of the Act of 1872 were re-enacted.*"

In deciding the instant case, the New Jersey Court of Errors and Appeals disregarded the interpretation of the *Inter-Island Steam Navigation Co.* case made in 1921 by the Circuit Court of Appeals for the First Circuit in *Burns* v. *Fred L. Davis Co.*, 271 Fed. 439. In the *Burns* case, the court said, by Bingham, C. J., at page 441 (italics ours):

> "In 1915 Congress repealed section 4536 of the Revised Statutes, and enacted in its stead section 12 (38 Stat. at Large, c. 153, Sec. 12, p. 1169 (Comp. St. Sec. 8325a)), which reads as follows:
>
> "'SEC. 12. That no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, * * *'
>
> "The language of section 12 is not materially different from that of section 4536 of the Revised Statutes, * * *.
>
> "But the effect to be given to the language of section 12, as compared with the equivalent language of section 4536, is quite different, for the Act of June 9, 1874 (18 Stat. at Large, c. 260, p. 64 (Comp. St. Sec. 8291)), made section 4536 inapplicable to seamen

employed on vessels 'engaged in the coastwise trade, * * *'

> *"By the enactment of section 12, which repealed section 4536 of the Revised Statutes, the limitation placed upon the language of that section by the Act of June 9, 1874, has been removed. Inter-Island Navigation Co.* v. *Byrne,* 239 U. S. 459, 463, 36 Sup. Ct. 132, 60 L. Ed. 382."

That the decision of the New Jersey Court of Errors and Appeals in the case *sub judice* is in conflict with *Burns* v. *Fred L. Davis Co., supra,* and in conflict with *Inter-Island Steam Navigation Co. v. Byrne, supra,* appears from the following comment in Rose's Notes on U. S. Reports (1926) Rev. and Supp., Vol. 5, page 504 (italics ours):

> "239. U. S., 459-463—Inter-Island Steam Nav. Co. *v.* Byrne. Amendment of 1874 rendered provisions of Act of 1872, relative to protection of seamen's wages, inapplicable to vessels in coastwise trade.
>
> "Followed in Burns *v.* Fred L. Davis Co., 271 Fed. 442, holding Mass. Rev. Laws, C. 187, Sec. 31, authorizing seizure of fishermen's wages under trustee process, is void under Act of 1915, Sec. 12, *which repealed Rev. Stats., Sec. 4536, and removed limitation placed upon it by Act of 1874.*"

The decision below is likewise in conflict with *Ornstein* v. *Pittsburgh S. S. Co.,* 209 Ill. App. 202, and with *Manufacturers Trust Company* v. *Anderson,* 287 N. Y. Supp. 178.

In the *Ornstein* case the Illinois Appellate Court in 1916 held the exemption could be availed of by a seaman in the lakegoing trade (a trade in the same class with the coastwise trade by the provisions of the Act of June 9, 1874, C. 260, 18 Stat. 64).

In *Manufacturers Trust Company* v. *Anderson,* which was followed by *Migliaccio* v. *Cappola,* 289 N. Y. S. 891, the Supreme Court of New York, Appellate Division, held

the wages of a longshoreman were exempt from execution because of the provisions of Section 12 of the Act of March 4, 1915 (46 U. S. C. A. 601), saying:

> "In our opinion the Seaman's Act of 1915 (38 Stat. 1164), was more than a reenactment of the law of 1872, for the reason that the wages of 'fishermen' (not included in the Act of 1872) and all 'seamen' are made exempt from execution and attachment (Sec. 12, 46 U. S. C. A. 601) * * *."

While it is true that the Alabama Supreme Court in *Duggar* v. *Mobile & Gulf Nav. Co.*, 239 U. S. 459, ruled that the wages of seamen engaged in coastwise trade are exempt from execution, it did so because it misconceived the effect of the adoption of the U. S. Code by Act of June 30, 1926, Chapter 712 (44 Stat. 777). The court in the *Duggar* case conceded that *Burns* v. *Fred L. Davis Co.*, 271 Fed. 439, was a holding that the Act of 1874 was not a limitation on Sec. 12 of the Act of 1915 before the adoption of the United States Code, but concluded (without citing any authority therefor) that merely because both the Act of 1874 and the Act of 1915 were included in the United States Code, such inclusion evidenced an intent of Congress to make the former Act a limitation on Sec. 12 of the latter. The latter assumption was of course a patent error, for it is obvious that in the adoption of the United States Code, Congress had no intention of changing existing laws in any way, but desired merely to adopt a handy single-volume compilation of the existing federal laws.

That the United States Code of 1926 in no way made any change in the existing law is clear from the following extract from the enacting clauses of the Code Act (Act of June 30, 1926, Chap. 712, 44 Stat. 777) (italics ours):

> "(a) *The matter set forth in the Code,* evidenced as hereinafter in this section provided, *shall establish*

> *prima facie the laws of the United States, general and permanent in their nature, in force on the 7th day of December, 1925;* but *nothing in this Act shall be construed as repealing or amending any such law, or as enacting as new law any matter contained in the Code.* In case of any inconsistency arising through omission or otherwise between the provisions of any section of this Code and the corresponding portion of legislation heretofore enacted effect shall be given for all purposes whatsoever to such enactments."

Interpreting the above provision, this Court has held that the inclusion of a statute in the Code does not operate as a re-enactment of such statute. *Smiley* v. *Holm,* 285 U. S. 355, 373.

The effect of the Code is clearly stated in *Olson* v. *Mellon* (D. C. W. D. Pa.), 4 F. Supp. 947, 949:

> "The Code Act of 1926 repealed or amended no existing law, but was designed only to set forth the United States statutes as they existed on December 7, 1925."

It is obvious that the New Jersey Court of Errors and Appeals in following the *Duggar* case also misconceived the effect of the adoption of the United States Code, and that its decision is in conflict with the view as expressed by this Court in *Inter-Island Steam Nav. Co.* v. *Byrne,* as well as the law as laid down in the Federal court and State courts in Illinois and New York.

Petitioner submits that this Court should grant a writ of certiorari to review the decision of the New Jersey Court of Errors and Appeals.

II.

A master of a vessel is a seaman within the meaning of Section 12 of the Act of March 4, 1915, Chapter 153, Title 46, United States Code Annotated, Section 601.

The New Jersey Court of Errors and Appeals did not pass on the question of whether or not a master of a vessel

was a seaman within the meaning of Section 12 of the Act of March 4, 1915, although it assumed that he was such, saying:

> "Now Findlay, being engaged in the coastwise trade (and we assume as a seaman) cannot claim the exemption allowed seamen. * * *"

That a master is a seaman within the provisions of Section 12 of the Act of March 4, 1915, is evident from the statutory definition of the word "seaman" as appears in Revised Statutes, Sec. 4612, Title 46, U. S. C. A., Sec. 713, and is in accord with the views expressed by this Court in *Uravic* v. *F. Jarka Co.*, 282 U. S. 234.

Revised Statutes, Sec. 4612, provides (italics ours):

> "SEC. 4612. In the construction of this title, every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the 'master' thereof; and *every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman';* * * *"

It is clear that Sec. 4612 brings "every person (apprentices excepted) who shall be employed to serve in any capacity on board any vessel" into the class of "seaman." Only apprentices are excepted from the definition of "seaman," and, under the rule that an express exception excludes all other exceptions, masters are necessarily included in the definition of "seaman."

The liberal view of this Court in the interpretation of Sec. 4612 is shown in its opinion in *Uravic* v. *F. Jarka Co.*, *supra*, wherein Mr. Justice Holmes said in reference to that section, at page 239:

> "But that section merely provides that for the purposes of the chapter 'Seaman' shall include persons

who otherwise might be deemed not to be seamen. It is directed to extension, not to restriction, as remarked by Judge Crane in Resigno *v.* F. Jarka Co., 248 N. Y. 225, 242."

Conclusion.

For the foregoing reasons we respectfully submit that this Court should grant a writ of certiorari to review the final judgment of the New Jersey Court of Errors and Appeals.

Respectfully submitted,

CLEMENT K. CORBIN,
Attorney for Petitioner.

(9193-C)

FILE COPY

Office - Supreme Court, U. S.
FILED
DEC 4 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 167

CHARLES F. BLACKTON,

Petitioner,

vs.

AARON GORDON.

ON WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

PETITIONER'S BRIEF ON THE MERITS.

CLEMENT K. CONRAD,
Counsel for Petitioner.

EDWARD A. MARKLEY,
Of Counsel.

INDEX.

Subject Index.

	Page
Opinion of the court below	1
Jurisdiction	1
Claims advanced below and rulings made	2
Statement of the case	3
Summary of argument	5
Argument	9
Point I—The wages of seamen, including those engaged in the coastwise trade, are exempt by Federal law from arrestment or attachment from any court	9
(a) The law prior to the Seaman's Act of March 4, 1915	11
(b) The effect of the Seaman's Act of March 4, 1915	13
(1) Scope of Act of 1915	15
(2) Title of Act of 1915	16
(3) Legislative history of Act of 1915	16
(4) Manner of enactment of exemption in 1915	18
(5) Sec. 18 of Act of 1915	19
(6) Omission of restrictions as to trade in Sec. 12 of Act of 1915	19
(7) Rules of construction applicable	20
(8) Review of the cases in point	22
(c) The effect of the adoption of the United States Code on June 30, 1926, and supplements thereto	27
Point II—Findlay, the captain of a tugboat, was a seaman within the provisions of Section 12 of the Act of March 4, 1915 (46 U. S. C. A. 601)	29
Conclusion	36
Appendix	37

Table of Cases Cited.

	Page
Allen v. *Hallett*, 1 Fed. Cas. No. 223, pp. 472, 473	34
City of Los Angeles v. *United Dredging Co.*, 14 F. (2d) 365	34
Burns v. *Fred L. Davis Co.*, 271 Fed. 439	10, 14, 23, 27
Burns Brothers No. 31, The, 29 F. (2d) 855	32
DeGaetano v. *Merritt & Chapman D. & W. Co.*, 203 App. Div. 259, 196 N. Y. S. 573	34
Duggar v. *Mobile & Gulf Nav. Co.*, 224 Ala. 359, 140 So. 611	35
Ellis v. *United States*, 206 U. S. 246	21
Epps v. *Epps*, 17 Ill. App. 196	26, 29
Grimberg v. *Admiral Oriental Steamship Line*, 300 Fed. 619	34
Hickman v. *Hanover*, 33 F. (2d) 873	21
Hills v. *Joseph*, 229 Fed. 865	21, 30
Hynes v. *Feehan*, 4 N. F. 750	12
Inter-Island Nav. Co. v. *Byrne*, 239 U. S. 459,	10, 13, 14, 18, 22, 24
Knickerbocker Ice Co. v. *Stewart*, 253 U. S. 149	10
Kuhlman v. *W. & A. Fletcher Co.*, 20 F. (2d) 465	34
Manufacturers Trust Co. v. *Anderson*, 271 N. Y. Supp. 333	26
Martin v. *Acker*, 16 Fed. Cas., p. 884	34
McCarty v. *Steam Propeller City of New Bedford*, 4 Fed. 818	11, 18
Meyer v. *Dollar Steamship Line*, 43 F. (2d) 425	34
Nogueira v. *N. Y., N. H. & H. R. Co.*, 281 U. S. 128	33
Olson v. *Mellon*, 4 F. Supp. 947	28
Ornstein v. *Pittsburgh S. S. Co.*, 209 Ill. App. 202	14, 25
Osterhoudt v. *Stade*, 133 App. Div., 83, 117 N. Y. S. 809	21
Rogosich v. *Union Dry Dock & Repair Co.*, 67 F. (2d) 377	34
Saylor v. *Taylor*, 77 Fed. 476	34
Scott, In re, 250 Fed. 647	31
Smiley v. *Holm*, 285 U. S. 355	28
Southern Pacific Co. v. *Jensen*, 244 U. S. 205	10
State v. *Shook*, 97 Oh. St. 164, 118 N. E. 1010	21

Page

Swinehammer v. *Sawler*, 27 N. S. 448 11
The Amelia, 183 Fed. 899 ..... 11, 18, 21
The Balsa, 16 F. (2d) 408 32
The Buena Ventura, 243 Fed. 797 ..... 32, 34
The Burns Brothers No. 31, 29 F. (2d) 855 32
The George, Fed. Cases, No. 5329 32
The Mary Elizabeth, 24 Fed. 397 34
The North American, 18 Fed. Cas., p. 339 34
The Sea Lark, 14 Fed. (2d) 201 34
The ZR-3, 18 F. (2d) 122 32
United States v. *Atlantic Transport Co.*, 188 Fed. 42 34
United States v. *Lindgren*, 28 F. (2d) 725 31
United States v. *Nelson*, 100 Fed. 125 33
United States v. *Thompson*, 28 Fed. Cas. 102 34
Van Lier v. *Dord*, Fed. Cases No. 16862 32
Warner v. *Goltra*, 293 U. S. 155 28
Wilder v. *Inter-Island Navigation Co.*, 211 U. S. 239 ..... 14, 21, 24, 30

STATUTES CITED.

Act of June 7, 1872, 17 Stat. 262, Sec. 61 ..... 6, 14
Act of June 7, 1872, Sec. 65, R. S. 4612 ..... 8, 9, 12
Act of Congress of June 9, 1874 (18 Stat. 64), 46 U. S. C. A. 544 ..... 2, 3, 5, 7, 12, 27
Act of Congress of March 4, 1915 (38 Stat. 1164) 2, 9, 13
Act of Congress of March 4, 1915, Section 12 (38 Stat. 1169), 46 U. S. C. A. 601 ..... 2, 4, 5, 25
Act of Congress of March 4, 1915, Section 18 (38 Stat. 1185) 19
Act of June 30, 1926, Chap. 712, 44 Stat. 777 ..... 27, 28
Massachusetts, Rev. L., Chapter 189, Sec. 31 25
Merchant Marine Act of 1920, Sec. 33, 46 U. S. Code, Sec. 688 8
New Jersey Statute (Chapter 204, P. L. 1924, Section 12, 1 Cum. Supp. to Compiled Stats., p. 982) 4, 10
R. S. Sec. 2174 (Compiled Stat. 1916, Sec. 4357) 31
R. S. Sec. 4536 ..... 6, 12, 14, 15, 22
R. S. Sec. 4612 ..... 8, 12

	Page
U. S. C. A., Title 28, Section 344(b)	21
U. S. C. A., Title 28, Sec. 837	32
U. S. C. A., Title 46, Section 544	3
U. S. C. A., Title 46, Section 601	3, 4, 26, 27, 29
U. S. C. A., Title 46, Section 684 (R. S. 4582)	32

OTHER AUTHORITIES CITED.

52 Cong. Rec., p. 4639	17
p. 4641	17
p. 4733	17
51 C. J., p. 922	33
11 Op. Atty. Gen. 458 (1866)	32
Rose's Notes on United States Reports (1926), Rev. & Sup. Vol. 5, p. 504	25
Webster's New International Dictionary	33

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 167

CHARLES F. BLACKTON,

Petitioner,

vs.

AARON GORDON.

ON WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

PETITIONER'S BRIEF ON THE MERITS.

Opinion of the Court Below.

The opinion of the Court of Errors and Appeals of the State of New Jersey is reported below in 118 N. J. L. 159. This opinion affirmed the judgment of the New Jersey Supreme Court for the reasons expressed in the New Jersey Supreme Court opinion. The New Jersey Supreme Court opinion is reported in 117 N. J. L. 40.

Jurisdiction.

The date of the judgment of the New Jersey Court of Errors and Appeals to be reviewed is April 30, 1937 (R.

36, 37). Petition for writ of certiorari was filed June 23, 1937, and granted October 11, 1937 (R. 38). The jurisdiction of this Court is conferred by Section 344 (B) Title 28, United States Code Annotated, page 206, and by Rule 38, Section 5 (A), Title 28, United States Code Annotated page 24.

Claims Advanced Below and Rulings Made.

Petitioner contended below that the wages of seamen were exempt from execution because of the provisions of an Act of Congress of March 4, 1915 (38 Stat. 1164) entitled "An Act to Promote the Welfare of American Seamen in the Merchant Marine of the United States; * * *", Section 12 of that Act (38 Stat. 1169) which became part of the United States Code Annotated provided (46 U. S. C. A. 601 (R. 34)):

> "*No* wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this chapter. *This section shall apply to fishermen employed on fishing vessels as well as to seamen: Provided,* That nothing contained in this or any preceding section shall interfere with the order by any court regarding the payment by any seaman of any part of his wages for the support and maintenance of his wife and minor children. (Mar. 4, 1915, c. 153, Sec. 12, 38 Stat. 1169.)"

Respondent contended that the provisions of this section of the Act, *supra,* were limited by the provisions of an Act of Congress of June 9, 1874 (Chap. 260, 18 Stat. 64) which

became part of the United States Code Annotated, and which provides (46 United States Code Annotated 544):

> "None of the provisions of an Act entitled 'An Act to authorize the appointment of shipping commissioners by the several circuit courts of the United States to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen' shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts, or in the lake-going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions, or in any case where the seamen are by custom or agreement entitled to participate in the profits or result of a cruise or voyage. (June 9, 1874, c. 260, 18 Stat. 64.)"

The court below found that Section 544 of the United States Code Annotated expressly took seamen engaged on vessels in the coastwise trade out of the exemption granted by the provisions of Section 601 and, in fact, limited Section 601 to seamen engaged between east coast, west coast or foreign trade (R. 30).

Statement of the Case.

On January 9, 1934, respondent recovered a judgment of $500 and costs against Horace Findlay. On February 2, 1934, he obtained an order for execution against wages (R. 7). This order was against the wages and income due to Findlay from his employer, Erie Railroad Company, and required the railroad company to pay over to the constable of the court the sum of $10 every pay day until the judgment was satisfied (R. 22-23, Exhibit P-3 (C)).

A copy of the writ was served on the petitioner who was superintendent of the marine department of the railroad company (R. 10). Findlay, at the time of the service of

the writ, was employed as a captain of the tug Waverly, a United States registered vessel (R. 13). The Waverly operated within the lighterage limits of the New York Harbor (R. 13). His hours of duty were from 4 P. M. to 12 P. M. (R. 14). The petitioner did not deduct any part of Findlay's wages (R. 14). The treasurer of the railroad company by letter returned the writ and advised the clerk of the court that Findlay's employment exempted his wages from execution by virtue of the provisions of Section 601 of Title 46 of the United States Code Annotated (R. 24, Exhibit P-3 (E)).

Suit was then instituted by the respondent against the petitioner, predicated on the provisions of a New Jersey statute (Chapter 204; P. L. 1924, Section 12, 1 Cum. Supp. to Compiled Stats., pg. 982), which made liable the proper officer of a corporation who failed or refused to pay over to the officer presenting the execution the percentage of the indebtedness as shown therein (R. 1-2). This statute is printed as an appendix to this brief. Motions for nonsuit and direction of a verdict on the grounds that the wages of seamen were exempt from execution by virtue of the provisions of Section 601, Title 46 of the U. S. C. A. were denied (R. 16-17). Judgment was entered in favor of the respondent and against the petitioner for the sum of $106 and costs (R. 18). Petitioner appealed to the New Jersey Supreme Court. This Court assumed that Findlay was a seaman but held, in affirming the judgment, that seamen engaged in coastwise trade were not entitled to the exemption provided for in Section 601 of Title 46 of the U. S. C. A. because Section 544 of Title 46 of the U. S. C. A. limited the provisions of Section 601 (R. 28-32).

Petitioner appealed the judgment of the New Jersey Supreme Court to the New Jersey Court of Errors and Appeals. The New Jersey Court of Errors and Appeals affirmed the judgment of the New Jersey Supreme Court for

the reasons expressed in the opinion of the Supreme Court (R. 30).

Summary of Argument.

Petitioner, a superintendent of the Marine Department of the Erie Railroad Company, upon whom was served a writ of execution against wages, contends that the wages of all seamen regardless of what kind of trade they are engaged in, are exempt from execution issued out of a State court. Two questions are involved:

1. Whether or not the wages of seamen engaged in the coastwise trade are exempt from execution by virtue of the provisions of Section 12 of the Seamen's Act of March 4, 1915 (38 Stat. 1169; 46 United States Code Annotated, Section 601); and

2. Whether a master is a seaman within the purview of Section 12 of that act.

I.

Sec. 12 of the Seamen's Act of March 4, 1915, grants an exemption from garnishment of wages to "Any seaman or apprentice" and any State statute in conflict therewith is void. The Act of June 9, 1874, Chap. 260, 18 Stat. 64; 46 U. S. C. A. 544, places no limitation on the Act of March 4, 1915, and the wages of all seamen whether engaged in coastwise trade or not are exempt from execution. In order to show that the Act of 1874 is not a limitation on Section 12 of the Act of 1915, we view the law during three periods:

(a) Prior to the Act of 1915;

(b) Under the Act of 1915;

(c) Under the United States Code of June 30, 1926 and supplements thereto.

(a)

An exemption of wages from garnishment was afforded seamen by the maritime law, irrespective of statute. Nothing in the maritime law of this or other countries indicates any intent to restrict the exemption to any particular class of seamen. The exemption, in fact, was permitted coastwise seamen under the maritime law of this country. Legislative recognition was given to this rule of maritime law by Congress by the Shipping Commissioners' Act of June 7, 1872, 17 Stat. 262, Sec. 61 of which provided for an exemption to be enjoyed by "any seaman or apprentice". This provision became Sec. 4536, Revised Statutes, and its operation on the coastwise trade was removed by the Act of June 9, 1874, Chap. 260 (18 Stat. 64), which provided that none of the provisions of the Act of 1872 should apply to the coastwise trade.

(b)

In 1915, Congress passed an "Act to promote the welfare of American seamen in the merchant marine of the United States * * *" (38 Stat. 1164), in Sec. 12 of which the prior exemption provision (R. S. Sec. 4536) was expressly repealed and a new exemption provision, applicable to fishermen (not previously included) as well as to "any seaman or apprentice", was enacted. Petitioner contends this new exemption provision is applicable to all seamen in the merchant marine of the United States, in the coastwise as well as the foreign trade, for the following reasons: (1) The broad scope of the Act of 1915, designed for the protection of American seamen in general, as shown by the general applicability of other sections in the Act, as well as by the broad title, (2) the inclusion of fishermen, who are engaged almost exclusively in the coastwise trade, making the law inconsistent with any exclusion of seamen

in the coastwise trade from its benefits, (3) the legislative history of the Act of 1915, showing the intent of Congress to make Sec. 12 applicable to seamen generally, (4) the language of Sec. 18 of the Act of 1915 making the Act applicable to all vessels of the United States, (5) the fact that no language restricting the application of Sec. 12 to any particular trades, waters, or vessels, was included in Sec. 12, although where Congress desired to restrict the application of other sections of the Act of 1915, specific restrictive words were included therein, (6) a rule of liberal construction is almost universally applied to exemption statutes, and a rule of strict construction to provisions restricting the exemption.

(c)

The application of the exemption law provided by Sec. 12 of the Act of 1915 to seamen, apprentices and fishermen generally, irrespective of whether in the coastwise or foreign trade, was not changed by the inclusion of both Sec. 12 of the 1915 Act and also the Act of June 9, 1874, in the same chapter and title of the U. S. Code of 1926 (*i. e.*, as Title 46, U. S. C., Secs. 601 and 544). The compilers of the Code were not empowered to make any changes in the law, and no inference can be drawn from such inclusion of these sections in the law, except that each was *prima facie* part of the general and permanent laws of the United States. The law is, therefore, the same after as before the adoption of the code, and seamen in the coastwise trade may still claim the exemption given them by Sec. 12 of the Act of 1915.

II.

A master of a vessel is a seaman. Petitioner, the master of a coastwise vessel, is entitled to the benefits of Sec. 12 of the Act of March 4, 1915, which accords to "all seamen"

the right of exemption of wages from garnishee proceedings.

The Act of March 4, 1915, does not contain any definition of the word seaman. Examination of the exemption statute in the light of the Act of which it is a part reveals no reason for excluding any particular class of seaman from the benefits of Sec. 12. In construing the word "seaman" in another section of the Act of 1915 (Sec. 20, as amended, Merchant Marine Act of 1920, Sec. 33, 46 U. S. Code, Sec. 688) this Court has held that the word included a master.

In the absence of a definition of the word in the Act under consideration, the word should be given its ordinary meaning. Ordinarily the word is construed to include all those who follow the sea, including masters.

There is nothing in the history of exemption statutes to exclude masters from the benefits accorded to other seamen. The Act of June 7, 1872, contained an exemption statute applicable to seamen. That Act also contained a definition of seaman as "every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board" (Sec. 65, Act of 1872, R. S. 4612). That section also contained a definition of the word "master" as "every person having the command of any vessel".

The Act of 1872 contained a number of provisions affecting the relationship of "masters" and "seamen" one to another; hence in the construction of such sections it was necessary to distinguish between the two. But it does not follow that, in the sections not dealing with the relationship of masters and seamen one to another, but applying to seamen generally and affecting their rights as a class against their creditors, Congress intended to exclude masters when the definition of seaman is clearly broad enough to include them. To reach such a conclusion it would be necessary to read into the definition of seaman an exception which is

not there. This Court has said that the definition of seaman in R. S. 4612 is directed to extension not restriction. The express exception of apprentices from the definition of seaman shows that Congress intended to include all others who are ordinarily looked upon as seamen, including masters.

The definition in the Act of 1872 (R. S. 4612) does not govern this case, arising under the Act of March 4, 1915; but if it did a master is included within the plain terms of the definition of seaman contained in the 1872 statute.

ARGUMENT.

I.

The wages of seamen, including those engaged in the coastwise trade, are exempt by Federal law from arrestment or attachment from any court.

The wages of seamen are exempt from arrestment or attachment from any court under the provisions of the Act of Congress of March 4, 1915, Chapter 153 (38 Stat. 1164), entitled "An Act To promote the welfare of American seamen in the merchant marine of the United States; * * *". Section 12 of that Act (38 Stat. 1169) reads as follows:

> "That no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this title. This section shall apply to fishermen employed on fishing vessels as well as to seamen: Provided, that nothing contained in this or any preceding section shall interfere with the order by

any court regarding the payment by any seaman of any part of his wages for the support and maintenance of his wife and minor children. Section forty-five hundred and thirty-six of the Revised Statutes of the United States is hereby repealed."

While a New Jersey statute (Chapter 204, P. L. 1924, sec. 12, 1 Cum. Supp. to Comp. Stat., p. 982) permits executions against wages, such statute is void and inoperative as to seamen on vessels within the jurisdiction of the United States, and the process of the State court issued under such statute is also void and inoperative. This follows from the rule that contracts of seamen, being maritime in nature, are within the paramount powers of Congress to regulate and protect.

Burns v. *Fred L. Davis Co.* (C. C. A., 1st), 271 Fed. 439, 443;

Southern Pacific Co. v. *Jensen,* 244 U. S. 205;

Knickerbocker Ice Co. v. *Stewart,* 253 U. S. 149.

Prior to the enactment of Section 12 of "An Act to promote the welfare of American seamen in the merchant marine of the United States; * * *", *supra,* this Court, in *Inter-Island Nav. Co.* v. *Byrne,* 239 U. S. 459, held that seamen engaged in the coastwise trade between the period from June 9, 1874, to the effective date of the Act of March 4, 1915, were not entitled to exemption against wages. But petitioner will show that *from the effective date of the Act of March 4, 1915, down to the present time, seamen in the coastwise trade have been entitled to the exemption.*

To show this, it will be necessary to examine the legislative history of the exemption provision. For clarity, we will divide this discussion into three parts:

(a) the law prior to the Seamen's Act of March 4, 1915;

(b) The effect of the Seamen's Act of March 4, 1915; and

(c) The effect of the adoption of the United States Code of June 30, 1926, and supplements thereto.

(a) The Law Prior to the Seaman's Act of March 4, 1915.

Before discussing the legislation with reference to the exemption of seamen's wages from arrestment or attachment, it is to be noted that irrespective of any statute under the maritime law, seamen's wages were exempt from attachment in suits at common law.

The Amelia, (D. C., S. D., Ala.), 183 Fed. 899, 901;
McCarty, et al. v. *Steam Propeller City of New Bedford* (D. C., S. D., N. Y.), 4 Fed. 818.

There is no reason, in the absence of express statutory prohibition, for depriving seamen in the coastwise trade of the benefit of protective measures such as this. Seamen engaged in the coastwise trade are of no different type or less deserving of the benefit of this law than seamen in other trades. Examination of the maritime law of this and other countries shows nothing to indicate any restrictions on the exemption of any particular class or classes of seamen. In *The Amelia, supra,* it was clearly shown that under the maritime law the wages of a seaman engaged in the coastwise trade were exempt from attachment. That the exemption has long been a rule of the maritime law is clearly shown in the *McCarty* case, *supra,* Benedict, D. J., saying, p. 823:

> "I find, therefore, in the Consolato, the French ordinances, and the law of England, good ground for the opinion that by the maritime law of the United States the wages of seamen are not subject to garnishment at the instance of a creditor of the seamen in an action at law."

Similar protection is afforded seamen in Canada and Newfoundland. *Swinehammer* v. *Sawler,* 27 N. S. 448;

Hynes v. *Feehan*, 4 N. F. 750. It is clear, therefore, that this rule is no new creation of the statute, but one long recognized by maritime nations on the ground of public policy.

In 1872, Congress gave legislative recognition to this rule of maritime law by a comprehensive act containing sixty-eight sections, approved June 7, 1872, Chapter 322, 17 Stat. 262, and entitled, "An Act to Authorize the Appointment of Shipping Commissioners • • • ." Congress prescribed regulations concerning the employment, wages, treatment and protection of seamen. Section 61 of that Act provides, page 276:

> "That no wages due or accruing to any seaman on apprentice shall be subject to attachment or arrestment from any court; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of such wages, or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of such wages or of salvage made prior to the accruing thereof, shall bind the party making the same, except such advance securities as are provided for in this act."

Without material modification in language this provision became Section 4536 of the Revised Statutes, enacted into law June 22, 1874. Sec. 5601, Revised Statutes, provided that the revision did not affect or repeal any Act passed after December 1, 1873.

By Act of June 9, 1874, Chapter 260, 18 Stat. 64, entitled "*An Act in Reference to the Operations of the Shipping Commissioners' Act,* • • •" Congress had provided:

> "*That none of the provisions of an act entitled 'An act to authorize the appointment of shipping commissioners* • • •" shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific Coast, or in the lake-

going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions * * *." (Italics ours.)

The effect of the Act of June 9, 1874, was, of course, to exclude seamen engaged in the coastwise trade and certain other trades from the benefits of the "Shipping Commissioners Act" (Act of June 7, 1872), including the exemption from arrestment of wages provided by Section 61 of that Act, and it was so held by the United States Supreme Court in *Inter-Island Nav. Co.* v. *Byrne,* 239 U. S. 459.

However, the *Byrne* case was decided after the approval of the Act of March 4, 1915, on a set of facts arising prior to the effective date of the act of March 4, 1915, and consequently, the holding of the case which was to the effect that the Act of 1872 was limited by the Act of 1874 is in no wise a construction of the Act of March 4, 1915.

In the case *sub judice,* we are not dealing with a question arising prior to the Act of March 4, 1915, but with one arising subsequent to and under the provisions of the latter Act. As to the application of the exemption provision of the latter Act, the *Byrne* case is not concerned, except that in the last paragraph of the opinion Mr. Justice McReynolds definitely indicated that the law had been changed by the Act of 1915 as we shall attempt to show.

(b) The effect of the Seaman's Act of March 4, 1915.

On March 4, 1915, Congress enacted a new law designed for the further protection of seamen, and that law has been in force since its effective date, being known as the *"Act to promote the welfare of American seamen in the merchant marine of the United States* * * *" (Act of March 4, 1915, Chapter 153, 38 Stat. 1164).

Section 12 of the 1915 Act, which is quoted, *supra,* had a very important effect on the prior seamen's wage exemption

law, for it expressly *repealed* (see last two lines of Sec. 12) the exemption provision of Sec. 4536 Revised Statutes (originally Sec. 61 of the Act of June 7, 1872), and *enacted as new law* a broader provision operating to exempt from arrestment or attachment the wages of any seaman or fisherman, whether in the *foreign, coastwise, or lake-going trade.*

Burns v. *Fred L. Davis Co.* (C. C. A. 1st), 271 Fed. 439;
Ornstein v. *Pittsburgh S. S. Co.*, 209 Ill. App. 202;
See *Inter-Island Nav. Co.* v. *Byrne*, 239 U. S. 459, 463.

In *Inter-Island Nav. Co.* v. *Byrne, supra,* while the Court's holding was with reference to a question arising *before* the Act of March 4, 1915, went into effect, the last paragraph of the opinion nevertheless made it clear that it was the Court's understanding that *the latter Act had changed the law* so as to allow seamen in the coastwise trade the benefit of the exemption. With reference to the question as to whether seamen in the *coastwise* trade were entitled to the exemption (a point that had been left undecided in *Wilder* v. *Inter-Island Navigation Co.*, 211 U. S. 239, 245), Mr. Justice McReynolds said, in the *Inter-Island Nav. Co.* case, at page 463:

> "The particular point now presented was reserved in *Wilder* v. *Inter-Island Navigation Co.*, 211 U. S. 239, 245. *It has become of less importance since the Act of March 4, 1915, c. 153, 38 Stat. 1164, 1169, wherein the provisions of Sec. 61 of the act of 1872 were re-enacted.*" (Italics ours.)

The only meaning we can attribute to the statement that the question "has become of less importance since the Act of March 4, 1915", is that Congress had answered the question left undecided by the *Wilder* case by removing the exemption provision from the limitation of the Act of June 9, 1874, and reenacting it in the new Seamen's Act of March 4, 1915, an act affected by no such limitation. The law having thus been changed, the actual holding in the *Inter-Island Nav. Co.* case was clearly of less importance.

(1) SCOPE OF ACT OF 1915.

However, to clarify the point and show the actual intent of Congress when it adopted the Seamen's Act of March 4, 1915, it is first necessary to consider the Act itself.

It was a permanent law of broad scope designed for the protection of seamen on American vessels, and in many cases even seamen on foreign vessels while within the jurisdiction of the United States. It seems clear that when Congress in Sec. 12 of that Act (38 Stat. 1169) repealed the prior exemption provision of Sec. 4536 of the Revised Statutes, and thus took it out of the Revised Statutes and incorporated in this new permanent law a broader exemption applicable to fishermen as well as to seamen, with no limitation on its application to seamen and fishermen expressed therein; Congress definitely indicated its intention that the exemption should thereafter be available to all seamen, including those in the coastwise as well as in the foreign trade.

An examination of the Seamen's Act of March 4, 1915, reveals that it is a general and permanent statute in which Congress rewrote the law dealing with the shipping of seamen, their wages and effects, discharge, protection, relief, life saving appliances, etc. We find in this statute no general distinction or discrimination as to the protection of seamen engaged in American merchant ships in the coastwise trade as against those engaged in the foreign trade. Sections 3, 4 and 11, for example, as well as Sec. 12, deal with the rights of seamen generally. This fact is strongly persuasive that Congress intended to put all seamen on the same footing as to their treatment, and their protection in reference to their wages, in the absence of express provision to the contrary.

(2) TITLE OF ACT OF 1915.

Moreover, the title of the Act of 1915 clearly shows a purpose to promote the welfare of American seamen as a general class:

> "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

The broad title of the Act is strong evidence that its provisions were not intended to be limited to any particular class of seamen or vessel or trade unless there was contained in a particular provision an express limitation to that effect. Where the broad words "any seaman" are mentioned in the Act, it is submitted that Congress intended the term to embrace all seamen within the jurisdiction of the United States, in the coastwise or foreign trade.

(3) LEGISLATIVE HISTORY OF ACT OF 1915.

The intention of Congress that the exemption provision of the Act of 1915 should apply to all seamen within the jurisdiction of the United States, whether on foreign or American vessels, and whether in the foreign or coastwise trade, is further shown by the legislative history in Congress of the bill that was finally adopted as the Seaman's Act of 1915. The texts of the exemption provisions of the Senate bill and the House amendment, prior to ultimate agreement by a conference committee of both houses, were identical, except that the first part of the House amendment read "That no wages due or accruing to any seaman or apprentice *employed on a vessel of the United States* shall be subject to attachment or arrestment from any Court," while the Senate bill did not contain the words "*employed on a vessel of the United States.*"

Since the House amendment and Senate bill differed on that and on certain other points, they were sent to a conference committee in order that the differences might be resolved. The conference committee decided to strike out the limitation "employed on a vessel of the United States" which appeared in the House amendment, in order that the exemption provision might be made applicable to *all seamen*, whether employed on a vessel of the United States or on a foreign vessel. This purpose of Congress is clearly shown by the following quotation from the "Statement of the Managers on the part of the House" regarding the conference report on the Seamen's bill:

> "The managers on the part of the House at the Conference on the disagreeing votes of the two Houses on the Amendment of the House to the bill (S. 136) to promote the welfare of American seamen in the merchant marine of the United States * * *, submit the following written statement explaining the effect of the action agreed on:
>
> * * * * * * *
>
> "Section 12 of the Conference report is the same as Section 12 of the House Amendment, except that the words 'employed on a vessel of the United States' are stricken out, *making the exemptions therein provided for apply to seamen generally*" (52 Cong. Rec., p. 4639). (Italics ours.)

This same statement as to the intention of the conference committee with reference to making Sec. 12 apply to seamen *generally* was made in the Senate debate on the conference report by Senator Fletcher (52 Cong. Rec., p. 4733) and in the House debate on the report by Representative Alexander (52 Cong. Rec., p. 4641).

The text of the bill approved by the conference committee was adopted by both House and Senate and signed by the President. (38 Stat. 1164, 1169.) There is not the slightest

doubt, therefore, in the light of the legislative history of the bill, but that Congress fully intended that the exemption provision should apply to all seamen and fishermen on all vessels within the jurisdiction of the United States.

It might be argued, in view of the holding in *Inter-Island Nav. Co.* v. *Byrne,* 239 U. S. 459, (that as to cases arising prior to the effective date of the Act of March 4, 1915, seamen in the coastwise trade were not entitled to the exemption), Congress should have specifically provided that Sec. 12 should apply to seamen in coastwise trade if it intended they should be entitled to the exemption. It must be remembered, however, that the decision in the *Inter-Island Nav. Co.* v. *Byrne* case was not handed down until December 20, 1915, long after the Act of March 4, 1915, had been adopted, and moreover, that the Supreme Court of the United States had not before passed on the question of the applicability of the exemption statute to the coastwise trade, and that the lower federal courts had construed the exemption provision of the Act of 1872 as *applicable to the coastwise trade* in spite of the Act of June 9, 1874.

The Amelia (D. C., S. D., Ala.), 183 Fed. 899, 901;
McCarty, et al. v. *Steam Propeller City of New Bedford* (D. C., S. D., N. Y.), 4 Fed. 818.

Thus as the law had been interpreted when Congress adopted the Seamen's Act of 1915, the exemption provision had general application to all seamen, and there was no need, because of judicial construction, for Congress to provide *specifically* for application to the coastwise trade.

(4) MANNER OF ENACTMENT OF EXEMPTION IN 1915.

The definite intention of Congress to make the exemption provision of the Act of 1915 applicable generally, is shown also by the *manner* in which the new provision was enacted.

Whereas in the case of other provisions included in the Act of 1915, which Congress desired to modify in only a minor way, it did so by merely *amending* the prior law, in the case of the exemption provision here under consideration, Congress *repealed* the old exemption provision (contained in Sec. 4536 of the Revised Statutes) and enacted a new provision in general terms, and extended it to apply to fishermen. What other reason could Congress have had for repealing the old provision instead of merely amending it, unless it were a desire to make certain that the new exemption provision should be taken out of the old law with its limitations and clearly enacted into a new law with no limitations on its application to seamen and fishermen?

(5) SEC. 18 OF ACT OF 1915.

The broad intention of Congress to make the 1915 Act applicable to all seamen and vessels within the jurisdiction of the United States, except insofar as specifically restricted in the provision involved, is shown by the following provision of Sec. 18 of the Act (38 Stat. 1185), which reads in part as follows:

> "That this Act shall take effect, as to *all vessels* of the United States, eight months after its passage, and as to foreign vessels twelve months after its passage * * *." (Italics ours.)

(6) OMISSION OF RESTRICTIONS AS TO TRADE IN SEC. 12 OF ACT OF 1915.

It is true, of course, that in the case of certain provisions of the new Seamen's Act of 1915, Congress desired, for good and sufficient reason, to restrict their application to certain types of vessels or to vessels navigating in particular waters, or to American-owned vessels. It is very significant that where it desired to *effect such restrictions* on the application of particular sections, *Congress specifically included restric-*

tive words in the text. Thus, in Sec. 1, it was specifically provided: "This section shall not apply to fishing or whaling vessels or yachts." Sec. 2, on the other hand, was specifically limited to "all merchant vessels of the United States of more than one hundred tons gross, excepting those navigating rivers, harbors, bays, or sounds exclusively * * *." Likewise, Secs. 3, 4, 6, 11, 13, 14 and 15 each contain specific provisions limiting their application to certain vessels, waters or trades.

On the other hand, let us examine Sec. 12, the exemption provision. It contains no words of limitation as to what seamen it shall have application. It merely provides:

> "That no wages accruing to *any seaman or apprentice* shall be subject to arrestment or attachment from any Court, * * *. This section shall apply to fishermen employed on fishing vessels as well as to seamen * * *."

If Congress had desired, in rewriting the law in this respect, to exclude seamen in the *coastwise* trade from the benefit of the exemption, surely it would have expressly so provided. It did not do so, and construing Sec. 12 in the light of the other sections of the act, the conclusion is inescapable that Congress intended that all seamen and fishermen should enjoy the exemption, and that no restrictions as to particular vessels or trades were intended.

(7) RULES OF CONSTRUCTION APPLICABLE.

Petitioner contends, moreover, that the broad purpose of Congress in the Act of 1915 to afford protection to all seamen within the jurisdiction of the United States did not contemplate a narrow construction of the Act that would exclude the large class of seamen in the coastwise trade from its benefits. In the construction of a statute such as the exemption provision in question, a liberal rather than a

strict interpretation should be given, with a view to effecting the protection intended to be extended.

The Amelia (D. C., S. D., Ala.), 183 Fed. 899, 900, 901.

This rule of liberal construction of exemption statutes with a view to effecting their beneficent purposes is of practically universal application.

Hickman v. *Hanover* (C. C. A. 4th) 33 F. (2d) 873, 874;
Hills v. *Joseph* (C. C. A. 9th) 229 Fed. 865, 869.

In *Hills* v. *Joseph, supra,* the Circuit Court of Appeals said:

> "The rule of construction applicable to exemption statutes is the most liberal known to the law. As said in 18 Cyc. at page 1380:
>
> 'By all but universal rule the statutes which create or give the right of exemption to a debtor are held subject to the rule of liberal construction. Indeed, it would be more proper to say that they are generally subject to the most liberal construction which the Courts can possibly give them, the Courts taking the ground that, since the statutes have a beneficial object, their first duty is to see that this object is accomplished.' "

Conversely to the rule of *liberal construction of exemptions,* a rule of *strict construction* is applied to *provisions limiting or taking away the exemption,* whether in provisos and exceptions or in amending statutes.

Osterhoudt v. *Stade,* 133 App. Div. 83, 117 N. Y. S. 809;
Epps v. *Epps,* 17 Ill. App. 196;
State v. *Shook,* 97 Oh. St. 164, 118 N. E. 1010.

As is pointed out in *Wilder* v. *Inter-Island Navigation Co.,* 211 U. S. 239, at pp. 248, 249, ordinarily "the sailor's only means of subsistence on shore are his wages earned at sea. If these may be stopped by an attachment suit

the instant his ship is moored to the wharf, a new hardship is added to a vocation already subject to its full share of the ills of life." Were there any doubt as to Congress' intent, although petitioner does not believe there is, if we consider the rule of liberal construction of an exemption and the rule of strict construction of provisos and amending statutes restricting the exemption, it seems only reasonable to conclude that Congress did not intend the new exemption provision of the Seamen's Act of 1915 to be limited by the old Act of 1874 so as to deprive coastwise seamen of its benefits.

(8) REVIEW OF THE CASES IN POINT.

We have endeavored to show in the foregoing argument that it was the intention of Congress in enacting the exemption provision as part of the Act of 1915 to make it apply *to seamen and fishermen in the coastwise trade* as well as to seamen in the foreign trade, and that this intention is clear from an examination not only of the provisions of Sec. 12 and of other provisions of the Act, but also of the title to the Act and of the Committee reports and debates in Congress.

In the light of the foregoing, it is clear why this Court said, in the concluding paragraph of *Inter-Island Navigation Co.* v. *Byrne,* 239 U. S. 459, 463:

> "The particular point now presented was reserved in Wilder *v.* Inter-Island Navigation Co., 211 U. S. 239, 245. *It has become of less importance since the Act of March 4, 1915, c. 153, 38 Stat. 1164, 1169, wherein the provisions of Sec. 61 of the act of 1872 were* reenacted." (Italics ours.)

The plain meaning of the Court in the foregoing quotation is that when Congress repealed the exemption provision of Sec. 61 of the Act of 1872 (later Rev. Stat. Sec. 4536) and

in 1915 reenacted it with the addition of language extending it to fishermen and without words of limitation as to trade as Sec. 12 of the "Act To promote the welfare of American seamen * * *", the law was thereby changed so that the exemption provision was no longer limited by the Act of June 9, 1874. Such change in the law made the question passed upon in *Inter-Island Nav. Co.* v. *Byrne* a matter of *less importance, i. e.,* a matter rather of academic and historical interest.

That such was the clear meaning of the last paragraph of the opinion in *Inter-Island Nav. Co.* v. *Byrne* was likewise the view of the United States Circuit Court of Appeals for the First Circuit in *Burns* v. *Fred L. Davis Co.*, 271 Fed. 439. In the *Burns* case *supra,* it appeared that the libellant shipped on the libellee's schooner for a voyage from the Port of Gloucester to the Bay of Islands and to the Ports of Newfoundland and back to the Port of Gloucester. At the time of his discharge there was due him as wages $101.50. Shortly before his discharge the Gorton-Pew Vessels Co. sued the libellant in a District Court of Massachusetts in which it trusteed the libellee seeking to hold whatever wages were due to the libellant from his voyage. The libellant had also made an assignment of $50. of his wages to one Massel, which was recorded as required by law, and notice of such assignment was given to the libellee and demand made for payment. The libellee declined to pay the libellant his wages unless the attachment was discharged and the assignment cancelled. The Gorton-Pew Vessels Co. discharged the attachment, but Massel never cancelled his assignment. Upon receiving notice of the discharge of the attachment, the libellee offered the libellant his wages, but he declined to accept them unless certain statutory penalties and costs of the libel were paid. The District Court held that the libellant should recover

$101.90 with interest, but without costs. On appeal, the court, in finding that the libellee withheld the wages without sufficient cause and that the libellant was entitled to additional pay as well as costs of the libel, speaking through Bingham, J., said:

> "In 1915 Congress repealed section 4536 of the Revised Statutes, *and enacted in its stead* section 12 (38 Stat. at Large, c. 153, Sec. 12, p. 1169 (Comp. St. Sec. 8325a)), * * *
>
> "The language of section 12 is not materially different from that of section 4536 of the Revised Statutes, * * *.
>
> "But the effect to be given to the language of section 12, as compared with the equivalent language of section 4536, is quite different, for the Act of June 9, 1874 (18 Stat. at Large, c. 260, p. 64 (Comp. St. Sec. 8291)), made section 4536 inapplicable to seamen employed on vessels 'engaged in coastwise trade, * * *'
>
> *"By the enactment of section 12, which repealed section 4536 of the Revised Statutes, the limitation placed upon the language of that section by the Act of June 9, 1874, has been removed. Inter-Island Navigation Co.* v. *Byrne,* 239 U. S. 459, 463, 36 Sup. Ct. 132, 60 L. Ed. 382." (Italics ours.)

A careful reading of the opinion reveals that the case is a definite holding on the following propositions:

1. That in 1915 when Congress repealed Sec. 4536 of the Revised Statutes and enacted in its stead Sec. 12, the limitation placed upon the language of that section by the Act of June 9, 1874, was removed, on the authority of *Inter-Island Nav. Co.* v. *Byrne,* 239 U. S. 459, 463, and therefore that the wages of seamen in the trade with the British North American possessions are exempt from arrestment or attachment from any court.

2. That under *Wilder* v. *Inter-Island Nav. Co.,* 211 U. S. 239, Sec. 12 of the Seaman's Act of 1915 prevents the seizure of seamen's wages not only from writs of

attachment issued before judgment but by proceedings after judgment in aid of execution.

3. That under a State statute (Rev. L., Mass., Chapter 189, Sec. 31) no process may be validly issued from a State Court trusteeing the wages of a seaman.

4. That the wages of a fisherman in the trade with the British North American possessions are exempt from arrestment or attachment by reason of Sec. 12 of the Act of March 4, 1915, and any State law in conflict therewith is invalid.

That *Burns* v. *Fred L. Davis Co.* followed and was in harmony with the statement of the U. S. Supreme Court in the last paragraph of its opinion in *Inter-Island Nav. Co.* v. *Byrne, supra,* is clearly brought out in *Rose's Notes on United States Reports* (1926), Rev. & Sup. Vol. 5, p. 504.

Such holding by the Court that the wages of a fisherman on a voyage to a British North American possession are exempt from garnishment is necessarily of course a holding that the exemption provision of the Federal law contained in the Act of 1915 is not limited by the Act of June 9, 1874. The Court could not have reached its decision on this branch of the case except by holding that Sec. 12 was not limited by the Act of 1874, for the Act of 1874 provided that the Act of 1872, which included the original exemption provision, did not apply to sail or steam vessels "engaged in the coastwise trade, * * * or in the trade between the United States and the British North American possession * * *."

Adopting the same view, an Illinois appellate court in *Ornstein* v. *Pittsburgh S. S. Co.,* 209 Ill. App. 202, held (in 1916) that the wages of a seaman employed by a steamship company operating on the Great Lakes were not subject to garnishment, because of the exemption provision of Section 12 of the Seaman's law approved March 4, 1915.

The *Ornstein* decision is a holding that the exemption provision of Section 12 is not limited by the Act of June 9,

1874, for the latter Act provided that the Act of 1872 was inapplicable to the lakegoing as well as the coastwise trade.

The question was squarely presented to the New York Supreme Court, Appellate Division, in *Manufacturers Trust Company* v. *Anderson*, 271 N. Y. Supp. 333, in April, 1934. The opinion of the Court is brief and is set forth herein in full:

> "Order of Appellate Term reversed on the law and facts, with costs, and order of the City Court of the City of New York, County of Kings, which vacated the garnishee order affirmed with $10.00 costs and disbursements. In our opinion the Seamen's Act of 1915 (38 Stat. 1164) was more than a mere re-enactment of the Law of 1872 for the reason that the wages of 'fishermen' (not included in the Act of 1872) and all 'seamen' are made exempt from execution and attachment (Sec. 12; 46 U. S. C. A. 601). It seems clear that it was the intention of the Congress by the Act of 1874 (Act, Cong. June 9, 1874, 18 Stat. 64), which excepted seamen of coastwise trade from the exemption given them by the Act of 1872. It is also our opinion that the defendant is a seaman within the meaning of Sec. 10 of the Seamen's Act of 1915 (46 U. S. Code Ann., Par. 713)."

The only decision we find which supports the opinion of the New Jersey Court of Errors and Appeals to the effect that the wages of seamen engaged in coastwise trade are exempt from execution, is the case of *Duggar* v. *Mobile & Gulf Nav. Co.*, 224 Ala. 359, 140 So. 611, affirmed 140 So. 614. In this case the plaintiff sought to garnishee the wages paid by the Mobile & Gulf Nav. Co. to one P. M. Tindle, a judgment debtor, the said Tindle being employed at that time by the Navigation Company as a pilot or mate on one of its tugs plying the Alabama River and the Mobile River. The Navigation Company raised the defense that Tindel's wages were exempt from execution by virtue of the provisions of Sec. 601, Title 46, U. S. C. A.

The Alabama Court of Appeals ruled that seamen engaged in ordinary coastwise trade were not entitled to exemption from attachment of wages because of the fact that Sec. 544 of the U. S. C. A. limited the provisions of Sec. 601 of the U. S. C. A. In denying a writ of certiorari to review the judgment of the Court of Appeals in this case, the Supreme Court of Alabama conceded that *Burns* v. *Fred L. Davis Co.*, 271 Fed. 439, was a holding that the Act of 1874 was not a limitation on Sec. 12 of the Act of 1915 before the adoption of the U. S. Code, but concluded (without citing any authority therefor), that merely because both the Act of 1874 and the Act of 1915 were included in the U. S. Code, such inclusion evidenced an intent of Congress to make the former a limitation on Sec. 12 of the latter. The latter assumption was, of course, a patent error, for it is obvious in the adoption of the U. S. Code, Congress had no intention of changing existing laws in any way but desired merely to adopt a handy single-volume compilation of the existing Federal laws, as we shall show in the following chapter having to do with the effect of the adoption of the U. S. Code on June 30, 1926.

(c) The Effect of the Adoption of the United States Code on June 30, 1926, and Supplements Thereto.

We must next inquire whether any subsequent legislation changed the rule with reference to the application of the exemption. While the exemption provision, Sec. 12 of the Act of 1915, has never been repealed, amended or re-enacted, Congress in 1926 did adopt the United States Code (Act of June 30, 1926, Chap. 712, 44 Stat. 777), which compilation included as part of Chap. 18, Title 46 of the Code, Sec. 12 of the Act of 1915 as Sec. 601, and also the Act of June 9, 1874, as Sec. 544.

The question is whether such inclusion of these two sections in the same chapter of the same title evidenced any

intent of Congress to make the latter a limitation on the former. It is to be noted that the Code Secs. 544 and 601 set forth verbatim and *without change in phraseology of any kind* the sections of the Acts of 1874 and 1915, from which they were taken.

That such inclusion did not in any way change the law as it existed when the Code was adopted is established beyond question by the provision enacting the Code (Act of June 30, 1926, Chap. 712, Sec. 2 a, 44 Stat. 777, 1-4 U. S. C. Sec. 2 a), which provides in part:

> "• • • nothing in this Act shall be construed as repealing or amending any such law, or as enacting as new law any matter contained in the Code • • •"

That no intention on the part of Congress to change the law can be inferred from the inclusion of two provisions in the same Title and Chapter of the Code was settled beyond doubt by the U. S. Supreme Court in *Warner* v. *Goltra*, 293 U. S. 155, decided November 5, 1934. In the latter case the Court said (p. 161), by Mr. Justice Cardozo:

> "The compilers of the Code were not empowered by Congress to amend existing law, and doubtless had no thought of doing so. As to that the command of Congress is too clear to be misread. 1-4 U. S. C. Sec. 2 a, 44 Stat. Part I, 1."

The same view is expressed in *Olson* v. *Mellon*, (D. C., W. D., Penna.), 4 F. Supp. 947, 949, Moreover, it has been held by this Court that the inclusion of a statute in the Code does not even operate as a re-enactment of such statute.

Smiley v. *Holm*, 285 U. S. 355, 373.

Lest there be some mistaken inference from the fact that the Act of June 9, 1874 was even included in the Code, it should be pointed out that while that Act clearly did not operate as a limitation on Sec. 12 of the Act of 1915, never-

theless the Act of 1874 itself had not been repealed, but continued in full force and effect as a limitation on other provisions of the Act of June 7, 1872. The compilers of the Code, therefore, naturally included the Act of 1874 in the Code. The inclusion indicates nothing but that the Act was *prima facie* part of the general and permanent laws of the United States. It would have been an inaccuracy to have excluded it from the Code.

In view of the foregoing, it is obvious that the decision of the Supreme Court of Alabama in *Duggar* v. *Mobile & Gulf Nav. Co.*, 224 Ala. 359; 140 So. 614, where it was held that even though the Act of 1915 permitted coastwise seamen the exemption, the United States Code of 1926 deprived them of its benefits. It was clearly erroneous and based on a misconception as to the effect of the code. It further follows that the New Jersey Court of Errors and Appeals, in adopting the *Duggar* case, also misconceived the effect of the code, and that its judgment should be reversed.

II.

Findlay, the captain of a tugboat, was a seaman within the provisions of Section 12 of the Act of March 4, 1915 (46 U. S. C. A. 601).

The Act of March 4, 1915, "To promote the welfare of American seamen in the merchant marine of the United States * * *", of which the exemption statute here involved is a part, i. e., Section 12 (46 U. S. Code, Sec. 601, 38 Stat. 1169), does not itself contain any definition of the word "seaman." The language of Section 12 is general. It is a rule of practically universal application that exemption statutes are to be liberally construed, and that provisions limiting or taking away an exemption are to be strictly construed.

In *Hills* v. *Joseph* (C. C. A. 9th), 229 Fed. 865, the Circuit Court of Appeals said, p. 869:

> "The rule of construction applicable to exemption statutes is the most liberal known to the law. As said in 18 Cyc. at page 1380:
>
> 'By all but universal rule the statutes which create or give the right of exemption to a debtor are held subject to the rule of liberal construction. Indeed, it would be more proper to say that they are generally subject to the most liberal construction which the Courts can possibly give them, the Courts taking the ground that, since the statutes have a beneficial object, their first duty is to see that this object is accomplished.' "

The purpose of the statute of 1915 was to benefit seamen generally; the purpose of Section 12 thereof, to protect the earnings of a class of men who from earliest days have occupied a favored place in the law. There is nothing in the Act or in the particular section to lead one to believe that the exemption statute is to be given a narrow construction.

The reasons for the rule exempting wages of seamen from garnishment apply equally to all those who follow the seas, including masters, other officers, and ordinary seamen. In *Wilder* v. *Inter-Island Nav. Co.*, 211 U. S. 239, 248, 249, the Court said:

> "The sailor's only means of subsistence on shore are his wages earned at sea. If these may be stopped by an attachment suit the instant his ship is moored to the wharf, a new hardship is added to a vocation already subject to its full share of the ills of life."

Obviously a master and his family are just as dependent on his wages as the other officers, ordinary seamen and their families are dependent on their wages, and there is no valid ground for excluding masters from the benefits of the ex-

emption statute which on its face is applicable to "any seaman". A master is in no better position to deal with his creditors than are the other officers and seamen aboard the vessel. The fact that a sailor has risen to the rank of master does not necessarily make him any more provident or solicitous of his family's welfare.

In the absence of any definition in the Act of 1915 it is important to see how the word "seaman" is generally construed.

In *In re Scott* (D. C., S. D., Ala.), 250 Fed. 647, a master mariner was held to be a seaman within Revised Statutes 2174 (Compiled Stat. 1916, Sec. 4357), permitting seamen under certain conditions to become citizens of the United States. The Court in that case, in discussing the meaning of the word "seaman," said:

> "'Seaman' is defined by Webster as: 'One whose occupation is to assist in the management of ships at sea; a mariner; a sailor; applied both to officers and common mariners.' It is common knowledge that a man must be a seaman before he can be a master. It is manifest that the word 'seaman' might be used in different enactments in different senses, and the intended sense might appear from the context. If there is nothing in the context to show the sense in which the word is used, then it seems to me that it should be given the broadest meaning, so as to include a master, as well as a common seaman, before the mast * * *. The fact that a man has made the most of his opportunities, and has risen to the head of his profession, should not bar him from receiving the benefits conferred on his profession."

In *United States* v. *Lindgren,* 28 F. (2d) 725 (C. C. A. 4th), affirmed 281 U. S. 38, it was held that a third officer was a seaman and was entitled to the benefit of the same Act, the Circuit Court of Appeals stating at page 728: "A seaman was defined by Congress in the Act of June 7, 1872,

as any person employed or engaged to serve on board a vessel. R. S. 4612 (46 U. S. C. A. Sec. 713)."

Likewise, under what is now Section 684, Title 46, Chapter 18, U. S. Code, (R. S. 4582) a master of a vessel was held entitled, if a citizen of the United States, to three months' additional wages on being discharged in a foreign port, as in the case of a like discharge of any other seaman or mariner.

11 *Op. Atty. Gen.*, 458 (1866).

Under various other laws, masters have been held seamen. In *The Burns Brothers No. 31* (D. C., E. D. N. Y.), 29 F. (2d) 855, it was held that a master is a seaman within the meaning of the statute providing that the courts of the United States shall be open to seamen without furnishing bonds for costs (Title 28, U. S. Code, Sec. 837).

Again, in cases involving the right of a seaman to maintenance and cure under the general maritime law, the master of a ship has been considered a seaman.

The Balsa (C. C. A., 3rd), 10 F. (2d) 408;
Van Lier v. *Dord*, Fed. Cases No. 16, 862;
The George, Fed. Cases No. 5, 329.

Other cases illustrating the broad construction given the word "seamen" are *The Buena Ventura* (D. C., Ga.), 243 Fed. 797, 799, 800, where the Court said: "* * * everyone is entitled to the privilege of a seaman who, like seamen, at all contribute to and labor about the operation and welfare of the ship when she is upon a voyage * * * a man who serves the ship as the result of a contractual engagement of any kind, and serves her in navigation * * *," and the *ZR-3* (D. C., Wash.), 18 F. (2d) 122, where the word seaman was defined as including all persons employed on a vessel to assist the main purpose of the voyage. See also,

51 C. J., p. 922, where it is said: "Broadly speaking, the term 'seaman' includes a ship's officer, as well as her men."

The broad meaning of the word seaman was used by this Court in *Nogueira* v. *N. Y., N. H. & H. R. Co.*, 281 U. S. 128, 134, 135, 136:

> "It appears that the bill (Longshoremen's and Harborworker's Compensation Act) originally excluded a master or member of a crew of a vessel, but was amended so as to extend to them the benefit of compensation * * *. *As the seamen* preferred to remain outside of the provisions of the bill, they were finally excluded and the bill was passed with the exceptions above quoted." (Italics ours.)

In *U. S.* v. *Nelson* (D. C., S. D., Ala.), 100 Fed. 125, 126, it was said: "The term 'seamen' * * * clearly means those Americans who practice or are employed in navigation—whose avocation is that of mariner."

Webster's New International Dictionary defines "seamen" as:

> "One whose occupation is to assist in the management of ships at sea; a mariner; * * *; applied both to officers and especially to common sailors. Opposed to landsman. Specif.: (a) In the *English Merchant Shipping Act,* s. 742 (1894), any person (*except masters,* pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship; (b) in the *United States Revised Statutes* (Sec. 4612), any person (*apprentices excepted*) employed or engaged to serve in any capacity on board a vessel." (Italics ours.)

Originally, in the days of sailing vessels, the word "seaman" meant one who could "hand, reef and steer," but the courts in attempting to keep up with changed conditions in navigation have given it an enlarged meaning (*Meyer*

v. *Dollar Steamship Line,* 43 F. (2d) 425, 426; *The Buena Ventura,* 243 Fed. 797, 799; *The Sea Lark,* 14 F. (2d) 201): Consequently the following persons have been held to be seamen: The owner of an (*The Sea Lark, supra*); a cook (*Allen* v. *Hallett,* 1 Fed. Cas. No. 223, pp. 472, 473) a fireman (*The North American,* 18 Fed. Cas., p. 339); an employee of a dredge (*Saylor* v. *Taylor,* 77 Fed. 476); a wireless operator (*The Buena Ventura, supra*); a carpenter (*Kuhlman* v. *W. & A. Fletcher Co.,* 20 F. (2d) 465; *Rogosich* v. *Union Dry Dock & Repair Co.,* 67 F. (2d) 377); a horseman (*U. S.* v. *Atlantic Transport Co.,* 188 Fed. 42, 43); a diver (*DeGaetano* v. *Merritt & Chapman D. & W. Co.,* 203 App. Div. 259, 196 N. Y. S. 573); an engineer of a dredging barge (*City of Los Angeles* v. *United Dredging Co.,* 14 F. (2d) 365); a watchman (*Grimberg* v. *Admiral Oriental Steamship Line,* 300 Fed. 619); a pilot (*The Mary Elizabeth,* 24 Fed. 397); a cooper (*U. S.* v. *Thompson,* 28 Fed. Cas. 102); a hand on a river boat (*Martin* v. *Acker,* 16 Fed. Cas., p. 884); and a surgeon, porter and chambermaid (see *Meyer* v. *Dollar Steamship Line, supra*).

Certainly if all the above persons are to be classed as seamen and given privileges accorded seamen, a master should be given the same privileges except when statutory provision expressly *excludes* him. He is employed to serve on board a vessel and to assist in the main purpose of the voyage. He contributes to the welfare of the ship and serves her in navigation. He runs the same risks, encounters the same dangers, and is engaged in the common adventure of sailing and safeguarding his employer's vessel and its cargo. The only difference between him and the persons mentioned above is that his work is more important than theirs, and his presence on board the vessel more necessary.

Remembering, therefore, that Section 12 of the Act of 1915 is an exemption statute which must be liberally construed, and that the words used therein have a flexible mean-

ing, it seems clear to us that the word "seaman" used in said section is broad enough to include a master of a vessel. That word is a general one, which includes several classes of persons, and no authority justifies restricting it to one class, or in giving it the narrowest possible interpretation. The protection to be afforded by the statute is equally applicable to all classes.

In *Ellis* v. *United States,* 206 U. S. 246, this Court expressly said that masters and captains, as well as others employed on various vessels, such as mates, engineers, firemen, cranemen and deckhands, were seamen. That case involved indictments and information relating to the limitation of hours of daily service of laborers and mechanics employed upon public works. At p. 259, Mr. Justice Holmes stated:

> "The words laborers and mechanics are admitted not to apply to seamen as that name commonly is used. Therefore it was contended but faintly that the masters of the tugs could not be employed more than eight hours. But the argument does not stop with masters of tugs, or even with mates, engineers and firemen of the same. *Wilson* v. *The Ohio,* Gilpin 505; *Holt* v. *Cummings,* 102 Pa. St. 212. The scows and floating dredges were vessels. *Rev. Stat.* Secs. 3, 4612. They were within the admiralty jurisdiction of the United States. *The Robert W. Parsons,* 191 U. S. 17. * * * *Therefore all of the hands mentioned in the informations were seamen within the definition in an earlier statute of the United States. Rev. Stat.* Sec. 4612; * * *." (Italics ours.)

Although three judges dissented from the opinion in the *Ellis* case so far as it related to the employment for more than eight hours a day of men engaged in working on dredges and scows, all of the members of the Court were in agreement that the master of a seagoing tug is a seaman.

At page 264 of the dissenting opinion of Mr. Justice Moody, it is said:

> "Seamen, whether employed in the Navy or other marine service of the United States or by contractors with the United States, are not laborers or mechanics. They, while laboring as seamen, could no more be brought within the limits of an eight-hour day than a physician, a lawyer, or a clergyman. They have always been regarded with special favor by all governments, and a series of laws specially applicable to them control and affect their conditions of labor. *The men employed on the seagoing tug, from the master down, were seamen, and their work was the work of seamen,* and the conviction with respect to them was, I agree, erroneous." (Italics ours.)

We respectfully submit that Findlay, as captain of a tug, was a seaman, and as such was entitled to have his wages exempt from execution or garnishment by the Seamen's Act of 1915.

Conclusion.

It is respectfully submitted (1) the wages of seamen, including those engaged in coastwise trade are exempt by Federal law from execution or garnishment by virtue of the provisions of Sec. 12 of the Seamen's Act of March 4, 1915; (2) that a master or captain of a tug is a seaman within the purview of Sec. 12 of that Act.

Respectfully submitted,

CLEMENT K. CORBIN,
Attorney for Petitioner.

EDWARD A. MARKLEY,
Of Counsel.

APPENDIX.

Chapter 204—Laws of 1924.

A Supplement to "An Act concerning District Courts" (Revision of 1898), approved June fourteenth, eighteen hundred and ninety-eight.

Be it Enacted by the Senate and General Assembly of the State of New Jersey:

1. Rights and credits in the nature of personal property of the defendant in execution, or if defendant be sued in a representative capacity, within his custody or control as such representative, may be levied upon, taken and sold or collected by virtue of said execution.

2. The term "rights and credits" includes all rights and credits in the nature of personal property which may be attached by writ of attachment against nonresident debtors, and also includes rights and credits in the nature of personal property of an equitable nature, except such trust funds as are now exempt by law.

Such rights and credits shall be levied upon and taken in the manner in which property is attached under writs of attachment against nonresident debtors under the act to which this is a supplement.

3. No sale shall be made of such rights and credits, unless by leave of the court.

4. Sales of rights and credits in the nature of personal property shall be made in the manner provided for judicial sales of chattels under the act to which this act is a supplement.

5. In lieu of the sale of such rights or credits, the officer charged with the duty of levying said execution may, in his own name, as such officer, liquidate said rights and credits by collection or, with the assent of the plaintiff (and subject to other provisions of this act), in any other manner; and to that end, he shall, on request of the plaintiff, sue, or take any proper proceedings, at law or in equity, in his own name as such officer to obtain such recovery or relief as the

defendant would be entitled to, or as any receiver of such defendant would be entitled to.

6. After such rights or credits shall have been levied upon and taken, and upon application of plaintiff or defendant, the judge of the court out of which the execution shall be issued, may, in his discretion, appoint a receiver of the same.

7. Upon filing the order of appointment, the receiver shall be vested with the title to said rights and credits which the defendant had at the time of the levy upon the same. It shall be his duty to liquidate the same by sale (subject to the other provisions of this act), collection or otherwise; and to that end, he may sue, or take any proper proceedings at law or in equity, in his own name as receiver, to obtain such recovery or relief as the defendant would be entitled to if no execution had been issued. He shall apply the sums collected by him in payment of the amount due upon the execution, with costs, and his necessary expenses; and after retaining such reasonable compensation as shall be fixed by the court, he shall pay the balance into court.

8. The court may, at any time, in his discretion, direct the receiver to give bond for the faithful performance of his duties in an amount and with such security as the judge may, by order, prescribe.

9. After levy shall have been made under this act upon any debt due or accruing from a third person (herein called the garnishee) to the judgment debtor, the court may make an order upon such garnishee and the judgment debtor to show cause why the said debt (to an amount not exceeding the sum necessary to satisfy said execution) should not be paid to the officer holding the execution, or to the receiver. Upon return of the order to show cause, or at any time to which the hearing may be continued, an order may be made requiring the garnishee to pay said debt, if he admits it, to the officer holding the execution, or to the receiver, either in one payment or in installments, as the court shall deem just, which order may, at any subsequent time, on application, be modified, as may be just.

10. In case it shall be made to appear by affidavit that a judgment debtor is entitled to, or is in receipt of an income,

other than from such trust funds as are now exempt by law, the court may make an order requiring the defendant to show cause why he should not be ordered to make payments at stated periods, in installments (and upon such terms as the court may direct), out of such income on account of the execution. And upon the return of the order to show cause, or at any time to which the hearing may be continued, may make an order for such payments as aforesaid; and at any subsequent time, on application, may modify the terms thereof as may be just.

11. Hereafter when a judgment has been recovered in any District Court of this State and where an execution issued upon said judgment has been returned wholly or partly unsatisfied and where any wages, debts, earnings, salary, income from trust funds, or profits are due and owing to the judgment debtor, or shall thereafter become due and owing to him to the amount of eighteen dollars or more per week, the judgment creditor may apply to the court in which said judgment was recovered, without notice to the judgment debtor, and upon satisfactory proofs of such facts by affidavits or otherwise, the court must grant an order directing that an execution issue against the wages, debts, earnings, salary, income from trust funds, or profits of said judgment debtor and on presentation of such execution by the officers to whom delivered for collection to the person or persons from whom such wages, debts, earnings, salary, income from trust funds or profits are due and owing, or thereafter become due and owing, to the judgment debtor, said execution shall become a lien and a continuing levy upon the wages, debts, earnings, salary, income from trust funds or profits due or to become due to said judgment debtor to the amount specified therein, which shall not exceed ten per centum unless the income of said debtor shall exceed the sum of one thousand dollars per annum, in which case the judge may order a larger percentage, and said levy shall become a continuing levy until said execution and the expenses are fully satisfied and paid or until modified as hereinafter provided, but only one execution against the wages, debts, earnings, salary, income from trust funds or profits of said judgment debtor shall be satisfied at one time, and where

more than one execution has been issued or shall be issued pursuant to the provisions of this section against the same judgment debtor they shall be satisfied in the order or priority in which such executions are presented to the person or persons from whom such wages, debts, earnings, salary, income from trust funds or profits are due and owing.

12. It shall be the duty of any person, persons, agent, treasurer, or other fiduciary officer of a private or public municipal corporation, including any county and the State, to whom said execution shall be presented, and who shall at such time be indebted to the judgment debtor named in such execution, or who shall become indebted to such judgment debtor in the future, and while said execution shall remain a lien upon said indebtedness, to pay over to the officer presenting the same, such amount of such indebtedness as such execution shall prescribe until said execution shall be wholly satisfied, and such payment shall be a bar to any action therefor by any such judgment debtor. If such a person, persons or the proper officer of the corporation, private, municipal, county or State, to whom said execution shall be presented shall fail or refuse to pay over to said officer presenting said execution the percentage of said indebtedness, he shall be liable to an action therefor by the judgment creditor named in said execution, and the amount so recovered by such judgment creditor shall be applied towards the payment of said execution. Either party may apply at any time to the court from which such execution shall issue, upon such notice to the other party as such court shall direct, for a modification of said execution, and upon such hearing, the said court may make such modification of said execution as shall be deemed just, and such execution as so modified shall continue in full force and effect until fully paid and satisfied, or until further modified as herein provided.

13. Nothing in this act contained shall impair any provision of the act to which this is a supplement.

14. This act shall take effect immediately. Approved March 12, 1924.

FILE COPY

Office - Supreme Court, U. S
FILED
AUG 4 1937
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM—1937.

No. 167.

CHARLES F. BLACKTON,
Petitioner,

vs.

AARON GORDON.
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JOHN W. OCKFORD,
AARON GORDON,
Counsel for Respondent.

Table of Contents

PAGE

Statement 1

I—Congress never intended to give an exemption to a tugboat captain employed on regular trips and who reports for daily work at 4:00 P: M. finishing regularly at midnight and who lives in Jersey City and not on a boat..... 2

II—The Statute exempting a seaman's wages from execution (Sec. 601, Title 46, U.S.C.) does not apply to seamen in the coastwise trade (Sec. 544, Title 46, U.S.C.)..... 4

III—A Writ of Certiorari, not being a matter of right, should not be granted to this petitioner, who is not the person affected by the levy..... 8

IV—The application for a writ of certiorari should be denied.

(a) Findlay was a Master and not a seaman and was exclusively in the coastwise trade.

(b) The wages of a seaman in coastwise trade are not exempt.

(c) Petitioner does not show merit in his application 8

Table of Cases Cited

	PAGE
Burns v. *Davis*, 271 Fed. 442	6
Duggar v. *Mobile & Gulf Co.*, 25 Ala. A. 2, s. c. 140 Southern 611, 224 Alabama 359, s. c. 140 Southern 614	6, 7
Inter-Island v. *Byrne*, 239 U. S. 459	4, 5, 7, 8
Jackson v. *Hauffman*, 159 N. Y. Misc. 182, s. c. 287 N. Y. Supp. 177	6
Manufacturers Trust Co. v. *Anderson*, 241 App. Div. 843, 271 N. Y. Supp. 333	6
Migliaccio v. *Cappola*, 160 N. Y. Misc. 557, 289 N. Y. Supp. 891	7
Olson v. *Mellon*, 4 Fed. Supp. 947	7
Ornstein v. *Pittsburg S. S. Co.*, 209 Ill. App. 202	6
Smiley v. *Holm*, 285 U. S. 355	7
Uravic v. *F. Jarka Co.*, 282 U. S. 234	7
U. S. v. *Smith*, 95 U. S. 536	4
U. S. v. *The Grace Lothrop*, 95 U. S. 527, 532	5
Warner v. *Goltra*, 293 U. S. 155	2, 3
Wilder v. *Inter-Island Co.*, 211 U. S. 239	7

Table of Statutes Cited

Act of June 7, 1872 (17 Stat. 262, 276)	2, 4, 5, 6
Act of June 9, 1874 (18 Stat. 64)	4, 5, 7
Act of March 4, 1915	2, 4, 6, 7
Act of May 29, 1928	5
1920 Statute (Jones Act)	3
Revised Statutes of June 22, 1874 (sec. 4536)	5
U. S. Code, Section 544, Title 46	1, 4, 5, 7
U. S. Code, Section 601, Title 46	1, 4, 5

Supreme Court of the United States

OCTOBER TERM—1937.

CHARLES E. BLACKTON,
Petitioner,

vs.

No. 167.

AARON GORDON.
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Statement

Petitioner seeks a writ of certiorari to review the determination of the New Jersey Court of Errors and Appeals which held that Section 544 of Title 46 of the U. S. Code should be read in connection with and in limitation of Section 601, of the same Title.

Petitioner contends that Section 601 should be read alone and that Section 544 should be disregarded.

The question is whether a tug-boat captain, the Master of a vessel, engaged wholly in the coastwise trade, living on shore, working on an eight hour shift, earning from $200.00 to $215.00 a month, being paid by check every two weeks, is entitled to an exemption from garnishee process issued at the instance of a judgment-creditor.

Respondent contends that Congress never intended to exempt wages so earned and paid from the levy of an execution and that Section 601 should be read not only in connection with Section 544, but also in the light of its history and judicial interpretation.

I.

Congress never intended to give an exemption to a tugboat captain employed on regular trips and who reports for daily work at 4:00 P. M. finishing regularly at midnight and who lives in Jersey City and not on a boat.

That these are the facts clearly appears from the record (R., 18-20).

It is the underling on ship who is the ward of the admiralty and who is the object of statutory solicitation.

The original enactment was in 1872 (June 7). It was reenacted in 1915 (March 4). The system of Shipping Commissioners was set up for the protection of the seamen hired by the master.

The seaman is protected as to treatment, food, wages, health and disciplinary measures.

The master is not the one to be protected. He can protect himself. The men under him are to be saved from the uncontrolled power of the master of a ship.

This distinction is fully pointed out in

Warner v. *Goltra*, 293 U. S. 155,

as follows (p. 162):

> "The case for the respondent reduces itself to this, that by express or implied antithesis the word seaman is used in many statutes to designate a class of mariners exclusive of the master. It is also true, however, that in these same statutes a seaman excludes a stevedore. A goodly number of the statutes where the antithesis is sharpest lay a duty upon the

> master to be performed for the seamen under him. In law, so framed, there is no room for construction. A goodly number in addition give a remedy to seamen for wages wrongfully withheld, or define terms of payment that agreement may not vary. In respect of dealings of that order, the maritime law by inveterate tradition has made the ordinary seaman a member of a favored class. He is a 'ward of the admiralty', often ignorant and helpless, and so in need of protection against himself as well as others. The master, on the other hand, is able in most instances to drive a bargain for himself, and then when the bargain is made, to stand upon his rights. Discrimination may thus be rational in respect of remedies for wages. *The Bethulia*, (D. C.) 200 F. 876; *The Putnick*, (D. C.) 291 F. 902."

This is not a case under the 1920 Statute (Jones Act) the language of which, because of its purpose, requires a wider definition of the word "seamen."

Quoting again from *Warner* v. *Goltra, supra,* we find (p. 161):

> "The rule of construction laid down in section 713 must be confined to those sections of the chapter which were contained in the Act of 1872, or in the equivalent provisions of the Revised Statutes, before the Code had re-arranged them. The compilers of the Code were not empowered by Congress to amend existing law, and doubtless had no thought of doing so. As to that the command of Congress is too clear to be misread (1-4 U.S.C., sec. 2a, 44 Stat. at L. pt. 1, p. 1). To this it must be added that section 713, even in its relation to the sections fairly with its range, is 'directed to extension not to restriction'. *Uravic* v. *Jarka Co., supra* (282 U. S. 239, 75 L. ed. 314, 51 S. Ct. 111). It means that

'for the purposes of the chapter "seaman" shall include persons who otherwise might be deemed not to be seamen.' It puts into the class some that might otherwise be excluded; it does not take any one out who would otherwise be there."

Seamen under sections 544 and 601 are those who were seamen under the 1872 Act, the 1915 Act, and under maritime law.

The extension referred to in the above quotation does not apply here but the limitation of such extension applies.

II.

The Statute exempting a seaman's wages from execution (Sec. 601, Title 46, U.S.C.) does not apply to seamen in the coastwise trade (Sec. 544, Title 46, U.S.C.).

That Findlay, the judgment-debtor, was exclusively in the coastwise trade is not disputed (Petition, p. 2).

The Act of June 7, 1872, (17 Stat. 262, 276) exempted seamen's wages from execution.

The Act of June 9, 1874, (18 Stat. 64) excluded coastwise shipping from the operation of the 1872 Act.

This Court held that the 1874 Act simply clarified the original intent of the 1872 Act.

U. S. v. *Smith,* 95 U. S. 536;
Inter-Island v. *Byrne,* 239 U. S., 459, at 462.

The intent of the 1872 Act was to protect the improvident sailor at the end of a long voyage and Congress never

intended that act to apply to the coasting trade except between Atlantic and Pacific ports.

U. S. v. *The Grace Lothrop,* 95 U. S. 527, 532.

The 1872 Act was carried into the Revised Statutes of June 22, 1874 (sec. 4536). The Act of June 9, 1874, was omitted from that revision but was saved by section 5601 of such revision.

The 1915 Act repealed section 4536 of the Revised Statutes and re-enacted the Act of 1872, evidently to avoid any misinterpretation of the effect of the omission of the Act of June 9, 1874 from the revision.

The 1872 Act is now found in Title 46 U.S.C. in Section 601 and the 1874 Act in section 544 U.S.C. of the same title.

The effect of the 1915 repeal of section 4536 of the Revised Statutes and the re-enactment of the 1872 Act was to remove any doubt but that the coastwise trade was excluded from the operation of the exemption.

Inter-Island v. *Byrne,* 239 U. S. 459.

The enactment of the United States Code on June 30, 1926 and its confirmation by the Act of May 29, 1928, with the inclusion in Title 46 of both Provisions under Sections 544 and 601 respectively, demonstrate the continuance in force of the exemption and the limitation.

The cardinal principles of statutory construction here applicable are that, (a) re-arrangement does not change existing law, (b) omission of titles does not affect the purpose of the revision which is to re-state and not change the law, (c) enactment in substantially the same language of earlier legislation is deemed to be re-enactment and not new legislation, (d) repeal reinstates prior law which was re-

pealed by the Statute now repealed, (e) revision is not to imply change.

In maritime law there has always been and now is a distinction between the coasting trade and that which goes to sea.

The 1915 Act is not a new enactment nor is it to be considered as a single piece of legislation. It amended and revised laws relating to seamen. Such of its provisions as relate to the coasting trade specifically refer to the same. Section 12 of the 1915 Act is only a re-enactment of the old Act of 1872, section 61, except that a provision relating to fishermen was added.

The confusion in some of the courts has arisen from the assumption that the 1915 Act was a new law superseding all that had gone before. By calling it the "La Follette Act," this assumption has been furthered.

Wherever careful consideration was given and the matter fully presented to and considered by the courts, the conclusion was as respondent contends.

Duggar v. *Mobile & Gulf Co.*, 25 Ala. A. 2, s. c. 140 Southern 611, 224 Alabama 359, s. c. 140 Southern 614;
Jackson v. *Hauffman*, 159 N. Y. Misc. 182, s. c. 287 N. Y. Supp. 177.

Petitioner cites *Burns* v. *Davis*, 271 Fed. 442, which involved the wages of a fisherman in the trade with British North America; *Ornstein* v. *Pittsburg S. S. Co.*, 209 Ill. App. 202, involving the wages of a seaman on the Great Lakes; *Manufacturers Trust Co.* v. *Anderson*, 241 App. Div. 843, 271 N. Y. Supp. 333 as to which a writ of certiorari was allowed by this Court (293 U. S. 542 later

dismissed because of a change of parties, 293 U. S. 531); *Migliaccio* v. *Cappolla,* 160 N. Y. Misc. 557, 289 N. Y. Supp. 891, decided by the City Court of New York City, Kings County. None of these cases indicate any conflict in the Courts of last resort. The only decisions on the precise point by courts of last resort are by the Alabama Supreme Court in the *Duggar* case, *supra,* and the New Jersey Court of Errors and Appeals in the case now under consideration, both of which are in accord with the decision of this court in *Inter-Island* v. *Byrne, supra,* and all of which support respondent's contention.

Petitioner also cites

Smiley v. *Holm,* 285 U. S. 355;
Olson v. *Mellon,* 4 Fed. Supp. 947;
Uravic v. *F. Jarka Co.,* 282 U. S. 234 and
Wilder v. *Inter-Island Co.,* 211 U. S. 239.

Smiley v. *Holm* and *Olson* v. *Mellon* have no application here because Section 544 of Title 46 U.S.C. is the inclusion of a Statute that was never repealed. The Act of June 9, 1874 was never repealed by any subsequent enactment.

The application of the *Uravic* case is much in favor of respondent as is shown by the above quotation from the opinion in *Warner* v. *Goltra, supra.*

In *Wilder* v. *Inter-Island, supra,* this Court expressly reserved the point here involved and in *Inter-Island* v. *Byrne, supra,* this Court held that the point had been eliminated by the clarification resulting from the 1915 Act as above pointed out.

III.

A Writ of Certiorari, not being a matter of right, should not be granted to this petitioner, who is not the person affected by the levy.

Findlay, the judgment-debtor, does not complain. If there was a meritorious controversy to be decided, would not Findlay have moved to quash the levy or at least joined in such an application?

In view of the fact that this Court in *Inter-Island* v. *Byrne, supra,* has decided the point here involved and the New Jersey Court of Errors and Appeals, in the case now under consideration, strictly followed the *Byrne* decision, as even petitioner admits (Brief in Support of Petition, p. 5) and further that the judgment debtor, Findlay, has never objected to the validity of the levy, respondent submits that this cause should not be subjected to further review.

IV.

The application for a writ of certiorari should be denied.

(a) Findlay was a Master and not a seaman and was exclusively in the coastwise trade.

(b) The wages of a seaman in coastwise trade are not exempt.

(c) Petitioner does not show merit in his application.

Respectfully submitted,

JOHN W. OCKFORD,
AARON GORDON,
Counsel for Respondent.

FILE COPY

Office - Supreme Court, U. S.
FILED
DEC 28 1937
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM 1937

No. 167

CHARLES F. BLACKTON,

Petitioner,

vs.

AARON GORDON,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

RESPONDENT'S BRIEF ON THE MERITS

AARON GORDON,
JOHN W. OCKFORD,
Counsel for Respondent.

INDEX.

SUBJECT INDEX.

	Page
Statement of the case	1
Argument	4
Point I—The wages of an American seaman engaged wholly in the coastwise trade are not exempt from garnishee proceedings	4
Point II—Findlay, a captain of a tugboat, is a master of a vessel and not a seaman and as such is not entitled to have his wages exempt from garnishee proceedings	22
Conclusion	26

TABLE OF CASES CITED.

Burns v. *Fred L. Davis Co.*, 271 Fed. 439 ..... 10, 11

Duggar v. *Mobile & Gulf Navigation Co.*, 140 Southern Reporter, 611 20

Inter-Island Nav. Co. v. *Byrne*, 239 U. S. 459, 463, 10, 11, 13, 14, 19, 20, 22, 23

Mugler v. *Kansas*, 123 U. S. 623 27

Ornstein v. *Pittsburgh S. S. Co.*, 209 Ill. 202 10

Sessions v. *Romadka*, 145 U. S. 29, 42 16

Taylor v. *Delancy*, 2 Caine's Cases 142, 148, 149 16

United States v. *Bathgate*, 246 U. S. 220 10

United States v. *Le Bris*, 121 U. S. 278, 280 16

United States v. *The Grace Lathrop*, 95 U. S. 527, 532 ..... 5, 7, 9, 17, 19, 20

Warner v. *Goltra*, 293 U. S. 155 ..... 23, 24, 26

Wilder v. *Inter-Island Nav. Co.*, 211 U. S. 239 ..... 13, 14

STATUTES CITED.

	Page
Act of June 7, 1872, 17 Stat. 262, Section 61,	6, 7, 8, 9, 12, 14, 15, 17, 22, 23, 25
Act of June 7, 1872, Section 65	22
Act of June 9, 1874 (18 Stat. 64), 46 U. S. C. A. 544,	5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17, 19
Act of March 4, 1915, Section 12 (38 Stat. 1185),	9, 10, 11, 14, 15, 16, 17, 18, 19, 22, 25
Act of March 4, 1915	8, 22, 25
Act of June 30, 1926	19
Act of May 29, 1928	19
R. S. 4612	22
R. S. 4536	7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 23, 26
R. S. 5601	8
Compiled Stats., 1918, Section 8291	19
Compiled Stats., 1918, Section 8325A	19
U. S. C., Title 46, Section 226	24
U. S. C., Title 46, Section 544	3, 4, 5, 6, 9, 19, 20, 26
U. S. C., Title 46, Section 601	3, 4, 5, 6, 19, 20, 22, 23, 26
U. S. C., Title 46, Section 713	22, 23, 25

OTHER AUTHORITIES CITED.

51 Congres. Rec., p. 911, Part 17	18
52 Congres. Rec., pp. 4639, 4641 and 4733	19
59 Corpus Juris, Sections 495, 528, 529 (Statutes)	15
25 Ruling Case Law, Sections 186, 187 (Statutes)	15
Senate Bill 136	19

Supreme Court of the United States

OCTOBER TERM 1937

No. 167

CHARLES F. BLACKTON,
Petitioner,

vs.

AARON GORDON,
Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

RESPONDENT'S BRIEF ON THE MERITS

STATEMENT OF THE CASE

On January 9, 1934, respondent, an attorney and counsellor at law of New Jersey, recovered a judgment in the First District Court of Jersey City for legal fees, against one Horace Findlay for $500.00 damages and $29.20 costs of suit (R., 7 & 8). On February 2, 1934 an order for an execution against the wages of Findlay, due and to become due to him from the Erie Railroad Company was granted and pursuant thereto a writ of execution was issued and served on the petitioner, the Superintendent of the Marine Department of the said Erie and Findlay's superior (R.,

8 & 10). The execution was returned to the Clerk of the Court with a stated refusal to honor it on the ground that Findlay was a seaman and his wages were exempt from attachment or arrestment under Section 601 of the United States Code. Thereafter suit was instituted by the plaintiff against the defendant Blackton pursuant to a New Jersey Statute making the agent of a corporation liable for failure or refusal to honor the execution.

Petitioner was Findlay's superior and the semi-monthly pay checks of Findlay passed through his hands. Findlay was a Captain on a tug-boat of the Erie which plied along the West bank of the Hudson River in the State of New Jersey, putting in from time to time for sundry purposes at Edgewater, Weehawken, Hoboken, Jersey City, all in New Jersey and at various points on the East bank of the Hudson River in New York City and also in Brooklyn on the East River. The Harbor Master of Hudson County testified that Jersey City, Hoboken, Bayonne, Weehawken and Edgewater are all separate ports (R., 13-16).

The debtor Findlay lived on shore, not on his boat, and reported daily at 4 P. M., finishing his work at midnight (R., 14). A judgment was obtained by respondent against petitioner on July 15, 1935 for $106.00, the amount then due under the Findlay execution and costs (R., 18). From this judgment the petitioner appealed to the New Jersey Supreme Court which Court in an opinion written by Justice Trenchard affirmed the judgment of the Court below. Thereafter the petitioner appealed from the judgment of affirmance by the New Jersey Supreme Court to the New Jersey Court of Errors and Appeals, which Court, in turn, affirmed the judgment of the New Jersey Supreme Court

for the reasons expressed in the opinion of Justice Trenchard. The opinion of the New Jersey Supreme Court is reported in 117 New Jersey Law 40 and that of the New Jersey Court of Errors and Appeals in 118 New Jersey Law 159. From the judgment of affirmance of the New Jersey Court of Errors and Appeals the petitioner, alleging divergent opinions in different States, petitioned this Court for a Writ of Certiorari to review the judgment of the New Jersey Court of Errors and Appeals, which petition was granted by Order filed on October 11, 1937.

Petitioner seeks review of the determination of the New Jersey Court of Errors and Appeals which held that Section 544 of Title 46 of the U. S. Code should be read in connection with and in limitation of Section 601, of the same Title.

Petitioner contends that Section 601 should be read alone and that Section 544 should be disregarded.

The question is whether a tug-boat captain, the Master of a vessel, engaged wholly in the coastwise trade, living on shore, working on an eight-hour shift, earning from $200.00 to $215.00 a month, being paid by check every two weeks, is entitled to an exemption from garnishee process issued at the instance of a judgment-creditor.

Respondent contends that Congress never intended to exempt wages so earned and paid from the levy of an execution and that Section 601 should be read not only in connection with Section 544, but also in the light of its history, judicial interpretation and rules of statutory construction.

ARGUMENT

I.

THE WAGES OF AN AMERICAN SEAMAN ENGAGED WHOLLY IN THE COASTWISE TRADE ARE NOT EXEMPT FROM GARNISHEE PROCEEDINGS.

The statute exempting a seaman's wages from execution (Sec. 601, Title 46, United States Code) does not apply to seamen in the coastwise trade (Sec. 544, Title 46, United States Code).

Section 601 reads as follows:

> "Attachment or arrestment of wages; support of seaman's wife. No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment shall bind the party making the same, except such allotments as are authorized by this chapter. This section shall apply to fishermen employed on fishing vessels as well as to seamen: Provided, that nothing contained in this or any preceding section shall interfere with the order by any court regarding the payment by any seaman of any part of his wages for the support and maintenance of his wife and minor children. (Mar. 4, 1915, c. 153, Sec. 12, 38 Stat. 1169.)"

Section 544 reads as follows:

> "Vessels in coastwise trade. None of the provisions of an Act entitled 'An Act to authorize the

> appointment of shipping commissioners by the several circuit courts of the United States to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen' shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts, or in the lake-going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions, or in any case where the seamen are by custom or agreement entitled to participate in the profits or result of a cruise, or voyage. (June 9, 1874, c. 260, 18 Stat. 64.)"

It will be observed that Sec. 601 grants an exemption to seamen; and it will also be observed that Sec. 544 deprives seamen engaged in coastwise trade of the exemption.

Respondent understands petitioner's contention to be that, although by the adoption of the Code, Congress did not intend to enact new law or repeal existing law, there was no limitation upon Section 601 either by Section 544 or otherwise.

Respondent, however, will argue that Section 601 is limited and does not apply to coastwise shipping both because of Section 544 and also because this Court held the intention was clear in the original enactment and it never was intended to exempt from execution the wages of coastwise seamen.

U. S. v. *The Grace Lothrop,* 95 U. S. 527, 532.

In order to reach a legal conclusion upon this point it is necessary to examine all the statutory enactments and

their judicial interpretation which led up to Sections 601 and 544 of the Code, as above quoted.

On June 7, 1872, Congress passed an Act entitled:

> "An Act to authorize the appointment of Shipping Commissioners by the several courts of the United States, to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen."

The Act contained 68 sections and in many specified particulars regulated the employment, wages, treatment and protection of seamen. Section 61 of the Act read as follows:

> "That no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of such wages, or of any attachment, incumbrance, or arrestment thereon; and no assignment or sale of such wages, or of salvage made prior to the accruing thereof, shall bind the party making the same, except such advanced securities as are provided for in this act."

On June 9, 1874, Congress passed an Act entitled:

> "In reference to the operations of the Shipping Commissioners Act, approved June 7th, 1872."

This Act provided as follows:

> "That none of the provisions of an act entitled 'An act to authorize the appointment of shipping commissioners by the several Circuit Courts of the

> United States to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen' shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific Coasts, or in the lake going trade between the United States and the British North American possessions, or in any case where the seamen are by custom or agreement entitled to participate in the profits or results of a cruise, or voyage."

The enactment of the Act of June 9, 1874 was interpreted by this Court in

> *United States* v. *The Grace Lothrop*, 95 U. S. 527, 532

to be an explicit declaration of Congressional intention in connection with the enactment of the Act of June 7, 1872, namely,

> "* * * *the language of the Act is in terms an explicit declaration that Congress never intended that the original Act should apply to vessels engaged in any part of the coasting trade except that between the Atlantic and Pacific Coasts.*" (Italics ours.)

On June 22, 1874, the revision of the Federal statutes became effective and Section 61 of the Act of June 7, 1872, without substantial change, became Section 4536 of the Revised Statutes in the following language:

> "No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court; and every payment of wages to a seaman or apprentice shall be valid in law, not-

> withstanding any previous sale or assignment of wages, or of any attachment, incumbrance, or arrestment thereon; and no assignment or sale of wages, or salvage, made prior to the accruing thereof, shall bind the party making the same, except such advance securities as are authorized by this Title."

with the limitation thereon contained in Section 5601 of the said Revised Statutes, which reads as follows:

> "The enactment of the said revisions is not to affect or repeal any act of Congress passed since the 1st day of December, one thousand eight hundred and seventy-three, and all acts passed since that date are to have full effect as if passed after the enactment of this revision, and so far as such acts vary from, or conflict with any provision contained in said revision, they are to have effect as subsequent statutes, and as repealing any portion of the revision inconsistent therewith."

Thus, the Act of June 9, 1874, declared the limitation upon or exception from the exemption provision in Section 61 of the Act of 1872 (R. S. Sec. 4536) and removed from the purview of the latter section seamen engaged in the coastwise trade. The Act of June 9, 1874, having been passed later than December 1st, 1873, was not repealed or otherwise affected by the revision of June 22nd, 1874 (R. S. Sec. 5601).

On March 4, 1915, Congress passed an Act entitled:

> "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion, and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

Section 12 of this Act contains substantially the same exemption provision found in Section 61 of the Act of June 7, 1872 (R. S. Sec. 4536), with an added provision making the exemption applicable to fishermen employed on fishing vessels. By the last sentence of the section, Section 4536 of the Revised Statutes is expressly repealed.

Counsel for the petitioner contends that this Section 12 is to be deemed to have repealed the former exemption provision (R. S. Sec. 4536) and to have enacted as a new law the exemption provisions as to all seamen whether in coastwise or foreign trade.

Apparently petitioner rests his appeal on an *implied* repeal of the limitation upon the exemption and bases this view upon the repeal of Section 4536 R. S. with a new enactment without an express limitation contained in the language of the new enactment.

Such a view however overlooks the following important considerations.

(a) The original act had no such limitation in its language. The limitation was found by this Court to exist by intention later merely given expression to in the Act of June 9, 1874.

U. S. v. *Grace Lothrop, supra.*

(b) The limitation was not repealed by the Act of March 4, 1915 and remained in force. It is now found in Section 544 U. S. C.

(c) Section 12 of the Act of March 4, 1915 is not *new enactment* but is *re-enactment* and therefore the rule of statutory construction is that it is deemed to be a con-

tinuation of existing law and subject to all other existing law and judicial interpretation of the prior law.

U. S. v. *Bathgate,* 246 U. S. 220.

Petitioner in a roundabout way asserts that the repeal of said Section 4536 and its re-enactment in another Act, with a new title, operated as an implied repeal of the limitation in the Act of June 9, 1874. Three cases are cited in support of this contention: *Burns* v. *Fred L. Davis Co.,* 271 Fed. 439; *Ornstein* v. *Pittsburgh S. S. Co.,* 209 Ill. 202; *Inter-Island Nav. Co.* v. *Byrne,* 239 U. S. 459, 463.

The decision in the *Ornstein* case is of little weight, since the question here involved was not before the Court. The case involved trade on the Great Lakes.

The case of *Burns* v. *Fred L. Davis Co.* (decided by the Circuit Court of Appeals for the First Circuit on February 16, 1921), seems to have expressed the dictum that by the repeal of Section 4536 by Section 12 of the Act of March 4, 1915, "the limitation placed upon the language of that section by the Act of June 9, 1874, has been removed", citing as authority *Inter-Island Nav. Co.* v. *Byrne* (*supra*).

In order to understand the effect of the decision in the *Burns* v. *Davis* case (271 Fed. 439) it must be ascertained what questions were before the Court.

Burns was employed on a vessel sailing between Massachusetts and Canadian Ports. If he was a seaman his wages were exempt as manifestly the coastwise limitation was inapplicable in his case. He claimed wages. The defense was that his wages had been assigned and were payable to his assignee. He recovered a judgment for his wages. Prior to the judgment, an attachment by another claimant was cancelled but the assignee had not released or

cancelled his notice of assignment. Defendant offered to pay the wages but Burns declined insisting upon certain penalties. The appeal was by Burns. He raised three questions:

1. That the Court below had not fixed his status as either seaman or fisherman on a voyage; and therefore did not decide the questions of a right to attach in the State Court.

2. That he was entitled to extra pay and expenses.

3. That he should have costs.

The Court held he was a seaman and that he was entitled to wages as such. The Court further held that he was entitled to the extra pay and costs because the employer withheld wages without legal cause. The Court held the attachment was invalid and did not justify the withholding of the wages.

The discussion of the Federal Statutes and decisions was merely to demonstrate the exemption of a seaman "engaged in making a foreign voyage to obtain a cargo and not on a fishing trip" from attachment of his wages earned upon such voyage.

Burns v. *Davis Co.*, 271 Fed. 439 at p. 444.

The Inter-Island Nav. Co. v. *Byrne* case (decided December 20, 1915), is not an authority for the dictum. That case involved a state of facts in existence prior to the passage of the Act of March 4, 1915. In that case, a garnishee summons was served upon the Navigation Company, the owner of a vessel engaged in the coastwise trade upon which one Kaleika was employed. The company set

up that Kaleika was hired directly by it (not through a shipping commissioner) on the "Clandine", plying only in the inter-island coast trade, and asked a discharge because of the exemption from attachment of seamen's wages by Section 4536, Rev. Stat. The trial court held that the subsequent legislation excluded seamen engaged in such coastwise trade from the exemption, and rendered judgment against both Kaleika and the company. The judgment was affirmed by the Supreme Court of the Territory of Hawaii (22 Hawaii 160), which judgment was affirmed by the Supreme Court of the United States.

At the time of this decision, the original Section 61 of the Act of June 7, 1872, had become Section 4536 of the Revised Statutes and the Act of June 9, 1874 remained unrepealed.

Mr. Justice McReynolds, writing for the Court, said:

> "Certainly, we think, the provisions in the Act of 1872 having direct reference to wages (including those in Sec. 4536, Rev. Stat.), because of their intimate connection with the navigation of vessels, must be considered as applicable thereto and therefore included within the scope of the amendment of 1874."

Clearly, therefore, the decision is to the effect that, both provisions being a part of the Federal Statutes relating to seamen, the Act of June 9, 1874, was to be deemed a limitation upon the exemption contained in Section 4536, rendering that section inapplicable to seamen engaged in the coastwise trade. In other words, the language of Section 4536, sufficiently broad to include all seamen, was limited by the prior Act of June 9, 1874, treated as an amendatory act, so as to exclude a particular class of seamen. Upon

no other theory could the court have rendered a judgment of affirmance.

This brings us to another contention of petitioner:

In the case of *Wilder* v. *Inter-Island Nav. Co.*, 211 U. S. 239, p. 245, this Court stated that the question of inapplicability of Section 4536, because the steamship company was engaged wholly in the coastwise trade, had not been raised in the court below or in the assignments of error or upon the argument. This Court then stated:

> "This removes any question on that subject from the case and renders it unnecessary to decide whether the Act of 1874, c. 259, 18 Stat. 64, had the effect to repeal Section 4536, so far as vessels thus engaged are concerned."

In the last paragraph of the decision in the *Inter-Island Nav. Co.* v. *Byrne* case, referring to the above quotation from the *Wilder* case, wrote as follows:

> "The particular point now presented was reserved in *Wilder* v. *Inter-Island Nav. Co.*, 211 U. S. 239, 245. It has become of less importance since the Act of March 4th, 1915, * * * wherein the provisions of Section 61 of the Act of 1872 were re-enacted."

With reference to this paragraph in the opinion, counsel for petitioner, in his brief, writes:

> "The only meaning we can attribute to the statement that the question 'has become of less importance since the Act of March 4, 1915', is that Congress had answered the question left undecided by the *Wilder* case by removing the exemption provision from the limitation of the Act of June 9, 1874, and

> reenacting it in the new Seaman's Act of March 4, 1915, an act affected by no such limitation. The law having thus been changed, the actual holding in the *Inter-Island Nav. Co.* case was clearly of less importance."

In substance, this contention is to the effect that the Supreme Court, in the paragraph quoted, was asserting that the repeal of Section 4536 and the re-enactment of the provisions of Section 61 of the Act of 1872 which were similar to Section 4536 Rev. Stat. in the Act of March 4, 1915, removed the limitation imposed by the Act of June 9, 1874.

It seems to respondent that the opposite conclusion should obtain. The question reserved in the *Wilder* case was whether the Act of 1874 limited Section 4536 of the Revised Statutes of 1874 in so far as vessels engaged in the coastwise trade were concerned. The language in the *Byrne* case "has become of less importance since the Act of March 4, 1915, * * * wherein the provisions of Section 61 of the Act of 1872 were re-enacted", has been judicially understood to mean that any further argument such as had been made in the *Byrne* case as to the survival of the limitation of the 1874 Act as against Section 4536 of the Revision of 1874 was eliminated by Section 12 of Act of March 4, 1915 which was a re-enactment of the provisions of Section 61 of the Act of 1872, the said provisions of Section 61 of 1872 and the said provisions of Section 4536 being substantially the same.

The decision in the *Inter-Island Nav. Co.* v. *Byrne* case answered the question undecided in the *Wilder* case. The inescapable purport of the affirmance of the judgment in the *Byrne* case is that the Act of 1874 was a limitation

upon the exemption in Section 4536, so long as both provisions remain in the statutes regardless of titles and positions. This conclusion is fortified by two well established rules of construction.

> *First, the re-enactment of a statute or a provision in a statute does not repeal an intermediate Act which qualifies or limits the first Act, but the intermediate Act is deemed to remain in force and to qualify or modify the new Act as it did the original Act. Second, an Act which repeals and simultaneously re-enacts substantially the same statutory provisions is construed, not as a repeal of the original statute, but as an affirmance and continuation thereof.* (Italics ours.)

These rules are stated or recognized in the following authorities: *25 Ruling Case Law,* Sections 186, 187 (Statutes); *59 Corpus Juris,* Sections 495, 528, 529 (Statutes) and cases cited.

The application of these rules conclusively rebuts petitioner's contention that the Supreme Court in the *Byrne* case decided that the simultaneous repeal of Section 4536 and re-enactment of provisions of Section 61 of Act of 1872, which provisions are like those in Section 4536, by Section 12 of the Act of 1915, left the re-enacted section free from the limitation of the Act of 1874. On the contrary, under the rules above stated, the re-enactment of the original Section 61 of the Act of 1872, into Section 4536 of the Revised Statutes, and the simultaneous repeal and re-enactment of the latter section by the Act of 1915, in legal effect was a continuation and affirmance of the original provision limited in its scope by the intermediate act of June 9, 1874 which remained unaffected by the subsequent

repeal and simultaneous re-enactment effected by the Act of 1915.

The respondent's contention for construction of the Act of March 4, 1915, Section 12 as not being a repealer of the limitation of the exemption of Section 4536 (which limitation is contained in the Act of June 9, 1874) is further fortified by such decisions as:

> *United States* v. *Le Bris,* 121 U. S. 278, 280;
> *Sessions* v. *Romadka,* 145 U. S. 29, 42;
> *Taylor* v. *Delancy,* 2 Caine's Cases 142, 148, 149, cited with approval by this Court (110 U. S. 619).

In *United States* v. *Le Bris,* this Court stated in reference to a general revision of the Federal Statutes, that

> "The re-enacted sections are to be given the same meaning they had in the original statute unless a contrary intention is plainly manifested."

A similar rule was stated in *Sessions* v. *Romadka* in these words:

> "Congress having in the Revised Statutes adopted the language used in the Act of 1837, must be considered to have adopted also the construction given by this Court to this sentence and made it a part of the enactment."

And, in *Taylor* v. *Delancy,* the court said

> "These acts are of the description of revised laws, and if susceptible of doubt in their interpretation, resort must be had to the law existing antecedently."

Again

> "My opinion is founded on this proposition, that where the law, antecedently to the revision was settled either by clear expression in the statutes, or adjudications on them, the mere change of phraseology shall not be deemed or construed a change of the law, unless such phraseology evidently purports an intention in the legislature to work a change."

Certainly, in the light of the foregoing rules Congress in enacting the Act of March 4, 1915, Section 12, which is in the same language substantially as Section 61 of the Act of June 7, 1872 (Section 4536 of the Revision of 1874), must be deemed to have known of the decision of this Court in *United States* v. *The Grace Lothrop, supra,* to the effect that

> "Congress never intended that the original Act (Act of June 7, 1872) should apply to vessels engaged in any part of the coasting trade, except that between the Atlantic and Pacific Coasts,"

hence its enactment of the Act of June 9, 1874, *supra,* the language of which Act being in its terms an explicit declaration of such intention. If Congress by Section 12 of the Act of March 4, 1915 desired the exemption to apply indiscriminately to coastwise as well as foreign shipping, it could have and would have so provided either by repealing the limitation contained in the Act of June 9, 1874 or by providing that Section 12 of the Act of March 4, 1915 should apply to coastwise shipping as well as other shipping. This Congress did not do. Apparently its intention was to preserve the exemption with its limitation. In connection with this, it may be remembered that the Act of

March 4, 1915 was before Congress for upwards of three years before its passage. During the course of a debate on the measure before the House of Representatives, Congressman Michael E. Burke of Wisconsin, a member of the Committee on Merchant Marine and Fisheries, discussed the entire bill, his speech taking up 13½ pages in the Congressional Record, and stated (at page 911, Vol. 51, Part 17 of the Congressional Record):

> "*Section 12 of the substitute* corresponds with section 11 of the Senate bill and *is a revision of the present section 4536 of the Revised Statutes.* It provides in substance that the wages of a seaman shall not be subject to attachment, and prevents the sale or assignment of wages by seamen before being earned. No assignment or sale of wages made prior to the accruing thereof shall bind the party making the same excepting such advances and allotments as are authorized by this section. Permission, however, is given by this section for the advancement or assignment of a portion or the whole of the seaman's wages to be made to his wife or minor children. This section protects the seamen from the unscrupulous boarding and lodging house keepers otherwise known as 'crimps'. Part of this section is also applicable to fishermen, who are represented to be in dire need of such protection. It also permits a court by order to apply any part of a seaman's wages to the support of the seaman's wife and minor children. This is new, and is designed for the protection of the seaman's family, and will prove to be a gratifying humane provision." (Italics ours.)

The House substitute was finally passed by both Houses and then signed by the President on March 4, 1915.

Petitioner refers to remarks made in Congress as to making the exemptions apply to seamen generally but this part of the debate related to the question of whether the Act was to apply only to seamen on United States' vessels as originally provided by Senate Bill 136, whereas, it was finally decided to omit the reference to United States' vessels and have it apply to vessels regardless of the country of registry. This is what was meant by the statements culled from 52 Congres. Rec., pp. 4639, 4641 and 4733.

A reading of the entire debate upon this feature of the Act clearly shows the purport of the language employed.

This Court in *Inter-Island* v. *Byrne, supra,* citing the *Grace Lothrop* case with approval, held that the Act of June 9th, 1874 attained the particular end in view, namely,

> "* * * the relief of vessels making relatively short voyages, with frequent opportunities for reaching ports, from burdensome requirements not then deemed essential to the welfare of seamen employed thereon."

In the compilation of the Federal Statutes in 1918 the section which is now Section 544 of the United States Code was carried into the Compilation as Section 8291 because it had not been repealed by Section 12 of the Act of March 4, 1915 (Chap. 153, Sec. 12, 38 Stat. 1169), which is found in the Compilation as Section 8325A.

There is further confirmation by the Act of Congress of June 30, 1926, and by the Act of Congress of May 29, 1928.

The first of said acts created the United States code which includes as above pointed out both Sections 544 and 601 and the latter statute perfected the accuracy of the code and confirmed the retention of both said sections.

A case in point is the *Duggar* case decided by the Court of Appeals of Alabama

Duggar v. *Mobile & Gulf Navigation Co.*, 140 Southern Reporter, 611.

The decision, rendered October 27, 1931, reviewed the entire history of the legislation which culminated in Sections 544 and 601 of United States Code.

The Plaintiff in that suit sought to garnishee the wages paid by the Mobile & Gulf Navigation Co. to one P. M. Tindel, judgment-debtor, said P. M. Tindel being employed by the Navigation Co. as a pilot or mate on one of its vessels or tugs plying on the Alabama River and Mobile River. The Navigation Co. set forth Section 601 as its basis for refusing to honor the execution.

The Court held that Section 544 above mentioned, limited the application of Section 601 to seamen engaged in coast to coast or United States to Foreign Port trade and hence held the garnishment was effective as against the wages of P. M. Tindel whose employment did not fall within the class of seamen engaged in coast to coast or United States to Foreign Port trade.

The following is a quotation from the opinion which cites and sets forth relevant portions of decisions of the United States Supreme Court (*Inter-Island Navigation Co.* v. *Byrne*, 239 U. S. 459, 36 S. Ct. 132, 60 L. Ed. 382; *U. S.* v. *Grace Lothrop*, 95 U. S. 527, 532, 24 L. Ed. 514, 515) supporting the conclusions reached by the Court:

> "Coming to the current state of the law on the subject at bar, we find that Congress on June 30, 1926, adopted an act 'to consolidate, codify and set

forth the general and permanent laws of the U. S. in force December 7, 1925, (44 Stat. 777) said consolidation and codification being known as the U. S. Code, and that the two sections in question, namely, The Act of June 9, 1874, Chap. 260, 18 Statutes at Large p. 64 and the Act of March 4, 1915, Chap. 153, Sec. 12, 38 Statutes at Large, part I, pp. 1164, 1169, were duly included therein and have remained unchanged to the present date, being known and designated in said Code respectively as U. S. C. title 46, Chap. 18 Sec. 544 (46 U. S. C. A. Sec. 544), and U. S. C. title 46 Sec. 601 (46 U. S. C. A. Sec. 601). The inclusion of these two sections in the present consolidation and codification is but further evidence, which should be most convincing of the clear intent and purpose of Congress to continue them in full force and effect; their known judicial construction having been settled, the Congress in adopting the Code, being presumed to have known the judicial construction which had theretofore been placed thereon. The Court should have rendered judgment for plaintiff against the Mobile & Gulf Navigation Co. (garnishee)."

This decision was affirmed by the Supreme Court of Alabama, reported in 140 Southern Reporter, 614.

In view of the present United States Code provisions and the decisions of this Court it appears that Congress never intended to give an exemption to officers or to a seaman employed on short regular trips and certainly never to one who like Findlay, reported to work daily at 4:00 P. M., finished regularly at midnight and who lived on shore.

II.

FINDLAY, A CAPTAIN OF A TUGBOAT, IS A MASTER OF A VESSEL AND NOT A SEAMAN AND AS SUCH IS NOT ENTITLED TO HAVE HIS WAGES EXEMPT FROM GARNISHEE PROCEEDINGS.

This presents an additional reason to support the judgment of the New Jersey Court of Errors and Appeals.

Section 12 of the Act of March 4, 1915 (46 United States Code, Chapter 18, Section 601) is a re-enactment of the provisions of Section 61 of the Act of 1872 (*Inter-Island Nav. Co.* v. *Byrne,* 239 U. S. 459, 463). The exemption given by Section 601 of the United States Code not only does not apply in coastwise trade but is also limited to seamen and not masters or captains of vessels.

As a part of the said Act of 1872 (June 7) Congress enacted Section 65 which provided

> "That to avoid doubt in the construction of this act, every person having the command of any ship belonging to any citizen of the United States shall, within the meaning and for the purposes of this Act, be deemed and taken to be the 'master' of such ship; and that every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman' within the meaning and for the purposes of the Act * * *"

This section was thereafter carried forward in the Revised Statutes as Section 4612 and later with a few verbal changes it was incorporated in the United States Code as Section 713 of title 46, Chapter 18 and now provides

> "In the construction of this chapter, every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the 'master' thereof; and every person (apprentice excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman'; * * *"

In the case of

Warner v. *Goltra*, 293 U. S. 155,

this Court stated

> "* * * The rule of construction laid down in section 713 must be confined to those sections of the chapter which were contained in the Act of 1872, or in the equivalent provisions of the Revised Statutes, before the Code had rearranged them * * *"

Section 601 of the United States Code, being a re-enactment of the provisions of Section 61 of the Act of June 7, 1872 (R. S. 4536), is governed by Section 713, *supra*, and the meaning of the word "seaman" in the said section by virtue of Section 713 excludes the master or captain of a vessel.

The statute in question (Act of June 7, 1872), its history, its language and its purposes relate to seamen and are limited to the protection of seamen employed by and at the mercy of the master of the vessel. It is perfectly obvious that neither the Act nor the Section (601 of the United States Code) apply to the Captain who is not and never has been a "ward of the admiralty". The ordinary seaman because of his proverbial improvidence was the one whose wages were in need of protection and as pointed out in *Inter-Island Nav. Co.* v. *Byrne, supra,*

> "The fundamental purpose of the Act of 1872 was to afford protection to seamen in respect to their treatment and wages."

The master is not the one to be protected. He can protect himself. The men under him are to be protected. The improvident person cannot be a master (Title 46 U. S. Code Sec. 226).

The distinction is fully pointed out in *Warner* v. *Goltra, supra,* as follows:

> "The case for the respondent reduces itself to this, that by express or implied antithesis the word 'seaman' is used in many statutes to designate a class of mariners exclusive of the master. It is also true, however, that in these same statutes a seaman excludes a stevedore. A goodly number of the statutes where the antithesis is sharpest lay a duty upon the master to be performed for the seamen under him. In law, so framed, there is no room for construction. A goodly number in addition give a remedy to seamen for wages wrongfully withheld, or define terms of payment that agreement may not vary. In respect of dealings of that order, the maritime law by inveterate tradition has made the ordinary seaman a member of a favored class. He is a 'ward of the admiralty', often ignorant and helpless, and so in need of protection, against himself as well as others. The master, on the other hand, is able in most instances to drive a bargain for himself, and then when the bargain is made, to stand upon his rights. Discrimination may thus be rational in respect of remedies for wages. *The Bethulia* (D. C.) 200 F. 876; *The Putnick* (D. C.) 291 F. 902."

In fact the Act of March 4, 1915 by its several sections seems to indicate a sharp antithesis in the duties devolving upon the master to be performed for the men under him.

A few of these sections are indicated:

> Section 3, which obligates the Master to pay to every seaman his wages at the termination of the agreement under which he was shipped or at discharge of such seaman and for delay, without sufficient cause, in paying the seaman, the Master shall pay to the seaman two days' pay for each day of delay.
>
> Section 4, which requires the Master to pay a seaman on demand one-half of his earned wages at every port the ship stops to load or unload cargo.
>
> Section 2, requires division of sailors into at least two watches, firemen into at least three watches, prohibits alternate work by seamen except in certain enumerated emergencies. Failure by the Master to comply entitles the seamen to their discharge from such vessel and payment of earned wages.
>
> Section 9, prohibits flogging and other forms of corporal punishment and any Master who violates same is guilty of a misdemeanor punishable by imprisonment for not less than 3 months nor more than 2 years.

So that, even if Section 12 of the Act of March 4, 1915 were not considered a re-enactment of the provisions of Section 61 of the Act of June 7, 1872 in order to be affected by the rule of construction contained in Section 713 of the

United States Code, *supra,* but assuming that it was a new act, it would nevertheless fall within the rule of *Warner* v. *Goltra, supra,* as last above quoted because of the duties devolving upon the master, by the various sections of the Act of March 4, 1915, for the protection and benefit of the seamen under him. Certainly the several enumerated sections of that Act indicate at least an implied antithesis between the words master and seaman, in fact, so sharp an antithesis as to definitely remove a master from the classification of a seaman for any of the purposes of the Seamen's Act of 1915.

CONCLUSION

The case resolves itself into one of reasonable and rational interpretation of Legislative intent.

Did Congress by any enactment, at any time, intend to give immunity to a captain of a tugboat; earning $200.00 a month; living on shore; receiving his salary by checks sent from the home office of his company; and neither requiring the benefits of an exemption nor being in anywise equitably entitled thereto?

Petitioner seeks a ruling which would be predicated upon the letter instead of the spirit of the law. He seeks also to ignore Section 544 which is as much a part of the law as Section 601. He seeks to assist a judgment-debtor in avoiding the payment of his debt by invoking a narrow construction of the statutes. He shuts his eyes to the real purpose of the legislation.

This Court, however, in construing statutes considers the substance and not the form.

Mugler v. *Kansas,* 123 U. S. 623, 8 Sup. Ct. Rep. 273, 297.

The judgment of the New Jersey Court of Errors and Appeals should be affirmed.

Respectfully submitted,

AARON GORDON,
JOHN W. OCKFORD,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 167.—October Term, 1937.

Charles F. Blackton, Petitioner,
vs.
Aaron Gordon.

On Writ of Certiorari to the Court of Errors and Appeals of the State of New Jersey.

[January 31, 1938.]

Mr. Justice Roberts delivered the opinion of the Court.

The issue is whether the master of a vessel is entitled to the benefit of Section 12 of the Act of March 4, 1915,[1] exempting wages of seamen from attachment.

The respondent recovered judgment against one Findlay, the captain of the tug Waverly, a registered vessel of the United States operating in New York Harbor. Under a state statute Findlay's wages due from his employer, the Erie Railroad Company, were attached by the service of an order on the petitioner, superintendent of the marine department of the railroad company. It is not disputed that if Findlay's wages were subject to garnishment the order, and its service upon the petitioner, were regular and lawful. The petitioner asserted that the federal statute exempted Findlay's wages from execution and refused to honor the order. Thereupon action was instituted by respondent against petitioner, pursuant to local statute which in such a case renders the recusant officer liable for the amount of the judgment. On the trial petitioner's motions for a nonsuit and for a directed verdict were denied and judgment went for the respondent. The petitioner successively appealed to the Supreme Court and the Court of Errors and Appeals. The judgment was affirmed.[2] Because of the importance of the question we granted the writ of certiorari.

The words of the statute are: "No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court . . . ." While, within the purview of some of the acts concerning shipping a master is included in the class

[1] c. 153, 38 Stat. 1164, 1169, U. S. C. Tit. 46, § 601.
[2] 117 N. J. L. 40; 118 N. J. L. 159.

designated seamen, in others the expression excludes the master.[3] In this case we must determine whether Congress intended, by Section 12 of the Act of 1915, to extend to a master the exemption of seamen's wages from garnishment. Decision is aided by a consideration of the provision in its original setting. It was first enacted as Section 61 of the Act of June 7, 1872,[4] which authorized the appointment of shipping commissioners to protect merchant seamen and to superintend their shipment and discharge. Scrutiny of the act as a whole leads to the view that in all matters affecting wages seamen were treated as a class which excluded masters; and this conclusion is required by Section 65,[5] which is in part: "That to avoid doubt in the construction of this act, every person having the command of any ship belonging to any citizen of the United States shall, within the meaning and for the purposes of this act, be deemed and taken to be the 'master' of such ship; and that every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman' within the meaning and for the purposes of this act; . . ."

In its present form the pertinent language of Section 12 of the Act of March 4, 1915, is identical with that originally employed in Section 61 of the Act of 1872, which became Section 4536 of the Revised Statutes. Section 12 of the Act of March 4, 1915, reenacted the section, adding a provision to make it applicable to fishermen employed on fishing vessels as well as to seamen. The statute is now Section 601 of Title 46 of the United States Code.

Section 65 of the Act of 1872 became Section 4612 of the Revised Statutes and, with immaterial amendments, now is Section 713 of Title 46 of the United States Code. Various other provisions of the Act of 1872 embodied in the Revised Statutes, either in their original form or as amended by the Act of March 4, 1915, and by the Merchant Marine Act of 1920,[6] now appear, with provisions of other statutes, as sections of Title 46 of the Code. In compiling it the original language of Section 65 of the Act of 1872 "To avoid doubt in the construction of *this act*", was, in Section 713 of Title 46, changed to read: "In the construction of

[3] Warner v. Goltra, 293 U. S. 155, 157, 158.
[4] 17 Stat. 262, 276.
[5] 17 Stat. 277.
[6] c. 250, 41 Stat. 988.

this chapter." The change in phraseology has given rise to the impression that the definitions found in Section 713 apply indifferently to the various statutes affecting merchant shipping.[7] To avoid confusion in determining the applicability of the definitions contained in that section, it is necessary to trace to their origin the substantive sections to which it may be deemed to refer, and to construe them in the light of the evident intent of Congress in the use of the word "seaman" in the original act. Since the pertinent provision of Section 12 of the Act of 1915 here under consideration and the definitions of Section 713 of Title 46 of the Code were commonly derived from the Act of 1872 and have not been materially changed, they must be read in collocation, and when this is done, the intent of Congress to exclude masters from the exemption accorded seamen is plain.[8]

The petitioner contends that Section 61 of the Act of 1872 was modified by the Act of June 9, 1874,[9] whereby the provisions of the Act of 1872 were made inapplicable to vessels in the coastwise trade. The latter Act has been carried into the Code as Section 544 of Title 46, and it is said that the repeal of Section 61 by the Act of March 4, 1915, and the reenactment of the section, slightly altered, did not operate to repeal the Act of 1874. In view of our decision that a master is not within the exemption granted by Section 12 of the Act of 1915 we need not pass upon this question.

The judgment is

Affirmed.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

---

[7] Warner *v.* Goltra, *supra*, p. 162.

[8] Compare Warner *v.* Goltra, *supra*, p. 162.

[9] c. 260, 18 Stat. 64.